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NUCLEAR REGULATORY COMMISSION

10 CFR Part 72

[NRC–2015–0156]

RIN 3150–AJ63

List of Approved Spent Fuel Storage Casks: Holtec International HI–STORM 100 Cask System; Amendment No. 9, Revision 1; Corrections

AGENCY: Nuclear Regulatory Commission.

ACTION: Correcting amendments.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) published a direct final rule in the **Federal Register** on January 6, 2016, amending its spent fuel storage regulations by revising the Holtec International (Holtec) HI–STORM 100 Cask System listing within the "List of approved spent fuel storage casks" to include Amendment No. 9, Revision 1, to Certificate of Compliance (CoC) No. 1014. The direct final rule inadvertently omitted Revision 1 to Amendment No. 8 (effective May 2, 2012, as corrected on November 16, 2012), to CoC No. 1014. This document is necessary to correct this omission.

DATES: This rule is effective on April 4, 2016.

ADDRESSES: Please refer to Docket ID NRC–2015–0156 when contacting the NRC about the availability of information for this action. You may obtain publicly-available information related to this action by any of the following methods:

- *Federal Rulemaking Web site:* Go to *http://www.regulations.gov* and search for Docket ID NRC–2015–0156. Address questions about NRC dockets to Carol Gallagher; telephone: 301–415–3463; email: *Carol.Gallagher@nrc.gov.* For technical questions, contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.
- *NRC's Agencywide Documents Access and Management System (ADAMS):* You may obtain publicly-available documents online in the ADAMS Public Documents collection at *http://www.nrc.gov/reading-rm/adams.html.* To begin the search, select "ADAMS Public Documents" and then select "Begin Web-based ADAMS Search." For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737, or by email to *pdr.resource@nrc.gov.*
- *NRC's PDR:* You may examine and purchase copies of public documents at the NRC's PDR, Room O1–F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.

FOR FURTHER INFORMATION CONTACT: Robert D. MacDougall, Office of Nuclear Material Safety and Safeguards, telephone: 301–415–5175, email: *Robert.MacDougall@nrc.gov;* U.S. Nuclear Regulatory Commission, Washington DC 20555–0001.

SUPPLEMENTARY INFORMATION:

I. Discussion

The NRC published a direct final rule in the **Federal Register** on January 6, 2016 (81 FR 371), that amended its spent fuel storage regulations by revising the Holtec HI–STORM 100 Cask System listing within the "List of approved spent fuel storage casks" to include Amendment No. 9, Revision 1, to CoC No. 1014. The direct final rule inadvertently omitted Revision 1 to Amendment No. 8 (effective May 2, 2012, as corrected on November 16, 2012) to CoC No. 1014. In a final rule published in the **Federal Register** on August 18, 2015 (80 FR 49887), the NRC amended its spent fuel storage regulations by revising the Holtec HI–STORM 100 Cask System listing within the "List of approved spent fuel storage casks" to add Revision 1 to Amendment No. 8 (effective May 2, 2012, as corrected on November 16, 2012) to the CoC No. 1014. This document restores Revision 1 to Amendment No. 8 (effective May 2, 2012, as corrected on November 16, 2012) to CoC No. 1014.

II. Rulemaking Procedure

Under the Administrative Procedure Act (5 U.S.C. 553(b)), an agency may waive the normal notice and comment requirements if it finds, for good cause, that they are impracticable, unnecessary, or contrary to the public interest. As authorized by 5 U.S.C. 553(b)(B), the NRC finds good cause to waive notice and opportunity for comment on the amendments because it will have no substantive impact and is of a minor and administrative nature. Specifically, these amendments are to restore Revision 1 to Amendment No. 8 (effective May 2, 2012, as corrected on November 16, 2012) to CoC No. 1014. These amendments do not require action by any person or entity regulated by the NRC. Also, the final rule does not change the substantive responsibilities of any person or entity regulated by the NRC. Furthermore, for these reasons, the NRC finds, pursuant to 5 U.S.C. 553(d)(3), that good cause exists to make this rule effective upon publication of this document.

List of Subjects for 10 CFR Part 72

Administrative practice and procedure, Criminal penalties, Hazardous waste, Indians, Intergovernmental relations, Manpower training programs, Nuclear energy, Nuclear materials, Occupational safety and health, Penalties, Radiation protection, Reporting and recordkeeping requirements, Security measures, Spent fuel, Whistleblowing.

For the reasons set out in the preamble and under the authority of the Atomic Energy Act of 1954, as amended; the Energy Reorganization Act of 1974, as amended; and 5 U.S.C. 552 and 553, the NRC is adopting the following amendments to 10 CFR part 72:

PART 72—LICENSING REQUIREMENTS FOR THE INDEPENDENT STORAGE OF SPENT NUCLEAR FUEL, HIGH-LEVEL RADIOACTIVE WASTE, AND REACTOR-RELATED GREATER THAN CLASS C WASTE

■ 1. The authority citation for part 72 continues to read as follows:

Authority: Atomic Energy Act of 1954, secs. 51, 53, 57, 62, 63, 65, 69, 81, 161, 182, 183,184, 186, 187, 189, 223, 234, 274 (42 U.S.C. 2071, 2073, 2077, 2092, 2093, 2095, 2099, 2111, 2201, 2210e, 2232, 2233, 2234, 2236, 2237, 2238, 2273, 2282, 2021); Energy Reorganization Act of 1974, secs. 201, 202, 206, 211 (42 U.S.C. 5841, 5842, 5846, 5851); National Environmental Policy Act of 1969 (42 U.S.C. 4332); Nuclear Waste Policy Act of 1982, secs. 117(a), 132, 133, 134, 135, 137, 141, 145(g), 148, 218(a) (42 U.S.C. 10137(a), 10152, 10153, 10154, 10155, 10157, 10161, 10165(g), 10168, 10198(a)); 44 U.S.C. 3504 note.

■ 2. In § 72.214, Certificate of Compliance No. 1014 is revised to read as follows:

§ 72.214 List of approved spent fuel storage casks.

* * * * *

Certificate Number: 1014.

Initial Certificate Effective Date: May 31, 2000.

Amendment Number 1 Effective Date: July 15, 2002.

Amendment Number 2 Effective Date: June 7, 2005.

Amendment Number 3 Effective Date: May 29, 2007.

Amendment Number 4 Effective Date: January 8, 2008.

Amendment Number 5 Effective Date: July 14, 2008.

Amendment Number 6 Effective Date: August 17, 2009.

Amendment Number 7 Effective Date: December 28, 2009.

Amendment Number 8 Effective Date: May 2, 2012, as corrected on November 16, 2012 (ADAMS Accession No. ML12213A170); superseded by Amendment Number 8, Revision 1, on February 16, 2016.

Amendment Number 8, Revision 1, Effective Date: February 16, 2016.

Amendment Number 9 Effective Date: March 11, 2014, superseded by Amendment Number 9, Revision 1, on March 21, 2016.

Amendment Number 9, Revision 1, Effective Date: March 21, 2016.

Safety Analysis Report (SAR) Submitted by: Holtec International.

SAR Title: Final Safety Analysis Report for the HI–STORM 100 Cask System.

Docket Number: 72–1014.

Certificate Expiration Date: May 31, 2020.

Model Number: HI–STORM 100.

* * * * *

Dated at Rockville, Maryland, this 30th day of March, 2016.

For the Nuclear Regulatory Commission.

Cindy Bladey,

Chief, Rules, Announcements, and Directives Branch, Division of Administrative Services, Office of Administration.

[FR Doc. 2016–07618 Filed 4–1–16; 8:45 am]

BILLING CODE 7590–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2015–4023; Directorate Identifier 2015–NE–29–AD; Amendment 39–18445; AD 2016–06–14]

RIN 2120–AA64

Airworthiness Directives; General Electric Company Turbofan Engines

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: We are adopting a new airworthiness directive (AD) for all General Electric Company (GE) CF6–80E1 turbofan engines with rotating compressor discharge pressure (CDP) seal, part number (P/N) 1669M73P02, installed. This AD was prompted by reports from the manufacturer of cracks in the teeth of two rotating CDP seals found during engine shop visits. This AD requires stripping of the coating, inspecting, and recoating the teeth of the affected rotating CDP seals. We are issuing this AD to prevent cracking of the CDP seal teeth, uncontained part release, damage to the engine, and damage to the airplane.

DATES: This AD is effective May 9, 2016.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in this AD as of May 9, 2016.

ADDRESSES: For service information identified in this final rule, contact General Electric Company, GE Aviation, Room 285, 1 Neumann Way, Cincinnati, OH 45215; phone: 513–552–3272; email: *aviation.fleetsupport@ge.com.* You may view this service information at the FAA, Engine & Propeller Directorate, 1200 District Avenue, Burlington, MA. For information on the availability of this material at the FAA, call 781–238–7125. It is also available on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2015–4023.

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2015–4023; or in person at the Docket Management Facility between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this AD, the regulatory evaluation, any comments received, and other information. The address for the Docket Office (phone: 800–647–5527) is Document Management Facility, U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: Herman Mak, Aerospace Engineer, Engine Certification Office, FAA, Engine & Propeller Directorate, 1200 District Avenue, Burlington, MA 01803; phone: 781–238–7147; fax: 781–238–7199; email: *herman.mak@faa.gov.*

SUPPLEMENTARY INFORMATION:

Discussion

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 by adding an AD that would apply to all GE CF6–80E1 turbofan engines with rotating CDP seal, P/N 1669M73P02, installed. The NPRM published in the **Federal Register** on November 17, 2015 (80 FR 71747). The NPRM was prompted by reports of cracks in the teeth of two rotating CDP seals found during engine shop visits. The NPRM proposed to require stripping of the coating, inspecting, and recoating the teeth of the affected rotating CDP seals. We are issuing this AD to prevent cracking of the CDP seal teeth, uncontained part release, damage to the engine, and damage to the airplane.

Comments

We gave the public the opportunity to participate in developing this AD. The following presents the comments received on the NPRM (80 FR 71747, November 17, 2015) ("the NPRM") and the FAA's response to each comment.

Request To Clarify Definition

Qantas, Air France, KLM Royal Dutch Airlines (KLM), and GE Aviation requested that the shop visit definition be clarified to allow for randomly occurring exemptions. Including exemptions would not increase the time between full shop visits.

We agree. We changed the shop visit definition to include specific conditions that do not qualify as shop visits.

Request To Clarify the Shop Visit Definition

KLM and Air France requested we clarify the phrase "separation of pairs of major mating engine flanges".

We agree. We changed the definition for engine shop visit.

Request To Change Compliance Time

Qantas requested a more restrictive compliance time for engines that experience blade-out events and a less restrictive compliance time of next part exposure for all other affected engines. Only engines that experience blade-out conditions require urgent compliance times.

We disagree. The compliance times in the NPRM were derived from analysis that includes the risks associated with engines with and without blade-out events. We did not change this AD.

Request To Clarify Compliance

Qantas requested that we clarify the specific type of stationary CDP seal repair and that we clarify what is considered a replaced stationary CDP seal.

We agree. We modified the Compliance section to specify the repair as 'honeycomb'. We also added a definition to define a replaced CDP seal.

Request To Change Applicability

KLM requested that the applicability be expanded to include spare parts.

We partially agree. We agree with the concern for accidental installation of borazon-nickel coated rotating CDP seals because the NPRM does not preclude this scenario. We disagree with expanding this AD to include spare parts because ADs address unsafe conditions of engines, not spare parts. We changed this AD by adding an installation prohibition paragraph to address this concern.

Request To Change Credit for Previous Action

KLM requested the Credit for Previous Action paragraph allow for other approved original equipment manufacturer approved procedures for stripping and recoating rotating CDP seal teeth. KLM recoated two CDP seals using a procedure approved by GE.

We disagree. It is unknown whether previous recoating procedures are equivalent to the procedures specified in the Credit for Previous Action paragraph of this AD. Any party may submit a request for an Alternative Method of Compliance using the procedures listed in this AD. We did not change this AD.

Additional Changes

We clarified paragraphs (e)(2)(i) and (e)(2)(ii) of this AD.

We updated the cost estimate. We changed the Costs of Compliance paragraph of this AD by increasing the number of affected engines by four and updating the costs accordingly.

Conclusion

We reviewed the relevant data, considered the comments received, and determined that air safety and the public interest require adopting this AD with the changes described previously.

We also determined that these changes will not increase the economic burden on any operator or increase the scope of this AD.

Related Service Information Under 1 CFR Part 51

We reviewed GE Service Bulletin (SB) CF6–80E1 S/B 72–0529, Revision 01, dated August 21, 2015. The SB describes procedures for stripping, inspecting, and replacing the seal tooth coating on the affected rotating CDP seals. This service information is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in the ADDRESSES section.

Other Related Service Information

We reviewed GE CF6–80E1 (GEK99376) Engine Manual, Revision 42, dated March 15, 2014. The engine manual describes acceptable repair procedures for the seal teeth.

Costs of Compliance

We estimate that this AD will affect 10 engines installed on airplanes of U.S. registry. We also estimate that it will take about 7.15 hours per engine to comply with this AD. The average labor rate is $85 per hour. Parts would cost about $7,835 per engine. Based on these figures, we estimate the total cost of this AD to U.S. operators to be $84,428.

Authority for This Rulemaking

Title 49 of the United States Code specifies the FAA's authority to issue rules on aviation safety. Subtitle I, section 106, describes the authority of the FAA Administrator. Subtitle VII: Aviation Programs, describes in more detail the scope of the Agency's authority.

We are issuing this rulemaking under the authority described in Subtitle VII, Part A, Subpart III, Section 44701: "General requirements." Under that section, Congress charges the FAA with promoting safe flight of civil aircraft in air commerce by prescribing regulations for practices, methods, and procedures the Administrator finds necessary for safety in air commerce. This regulation is within the scope of that authority because it addresses an unsafe condition that is likely to exist or develop on products identified in this rulemaking action.

Regulatory Findings

This AD will not have federalism implications under Executive Order 13132. This AD will not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.

For the reasons discussed above, I certify that this AD:

(1) Is not a "significant regulatory action" under Executive Order 12866,

(2) Is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979),

(3) Will not affect intrastate aviation in Alaska to the extent that it justifies making a regulatory distinction, and

(4) Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, under the authority delegated to me by the Administrator, the FAA amends 14 CFR part 39 as follows:

PART 39—AIRWORTHINESS DIRECTIVES

■ 1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by adding the following new airworthiness directive (AD):

2016–06–14 General Electric Company: Amendment 39–18445; Docket No. FAA–2015–4023; Directorate Identifier 2015–NE–29–AD.

(a) Effective Date

This AD is effective May 9, 2016.

(b) Affected ADs

None.

(c) Applicability

This AD applies to all General Electric Company (GE) CF6–80E1 turbofan engines with rotating compressor discharge pressure (CDP) seals, part number (P/N) 1669M73P02, installed.

(d) Unsafe Condition

This AD was prompted by reports from the manufacturer of cracks in the teeth of two rotating CDP seals found during engine shop visits. We are issuing this AD to prevent cracking of the CDP seal teeth, which can lead to uncontained part release, damage to the engine, and damage to the airplane.

(e) Compliance

(1) Comply with this AD within the compliance times specified, unless already done.

(2) Strip coating, inspect, and recoat the teeth of the rotating CDP seal, P/N 1669M73P02. Use paragraph 3.C.(2) of GE Service Bulletin (SB) CF6–80E1 S/B 72–0529, Revision 01, dated August 21, 2015 to do the strip coating, inspecting, and recoating, as follows:

(i) For engines that have had stationary CDP seal, P/N 1347M28G02, replaced or stationary CDP seal honeycomb repaired; strip coating, inspect, and recoat the teeth of the rotating CDP seal at the next engine shop visit.

(ii) For engines that have not had stationary CDP seal, P/N 1347M28G02, replaced or stationary CDP seal honeycomb repaired; strip coating, inspect, and recoat the teeth of the rotating CDP seal at the next part exposure of the rotating CDP seal.

(f) Installation Prohibition

After the effective date of this AD, do not install any rotating CDP seal, P/N 1669M73P02, that has not had its seal teeth recoated using procedures specified in ESM 72–31–10, REPAIR 002 of GE CF6–80E1 (GEK99376) Engine Manual, Revision 42, dated March 15, 2014, into any engine.

(g) Definitions

(1) For the purpose of this AD, exposure of the rotating CDP seal is defined as removal of the compressor rear frame from the high-pressure compressor (HPC) module.

(2) For the purpose of this AD, an engine shop visit is defined as the induction of an engine into the shop for maintenance involving the separation of any major mating engine flanges, except that the separation of engine flanges solely for the following purposes is not considered a shop visit:

(i) Transportation without subsequent engine maintenance.

(ii) Removing the turbine rear frame (TRF) for repair of TRF cracking.

(iii) Removing the top or bottom HPC case, or both, for HPC airfoil maintenance.

(iv) Removing only the accessory gearbox and/or transfer gearbox.

(v) Replacing the high-pressure turbine (HPT) stage 1 blades per CF6–80E1 SB 72–0504 "Quick-Turn Workscope Procedure to Replace CF6–80E1 Stage 1 HPT Blades".

(3) For the purpose of this AD, a stationary CDP seal is replaced if at any previous shop visit, the seal has been removed and a different seal is installed.

(h) Credit for Previous Action

You may take credit for the actions that are required by paragraph (e) of this AD if the actions were performed before the effective date of this AD using the procedures in ESM 72–31–10, REPAIR 002 of the GE CF6–80E1 (GEK99376) Engine Manual, Revision 42, dated March 15, 2014, or earlier versions.

(i) Alternative Methods of Compliance (AMOCs)

The Manager, Engine Certification Office, FAA, may approve AMOCs to this AD. Use the procedures found in 14 CFR 39.19 to make your request. You may email your request to: *ANE-AD-AMOC@faa.gov*.

(j) Related Information

(1) For more information about this AD, contact Herman Mak, Aerospace Engineer, Engine Certification Office, FAA, Engine & Propeller Directorate, 1200 District Avenue, Burlington, MA 01803; phone: 781–238–7147; fax: 781–238–7199; email: *herman.mak@faa.gov*.

(k) Material Incorporated by Reference

(1) The Director of the Federal Register approved the incorporation by reference (IBR) of the service information listed in this paragraph under 5 U.S.C. 552(a) and 1 CFR part 51.

(2) You must use this service information as applicable to do the actions required by this AD, unless the AD specifies otherwise.

(i) General Electric Company Service Bulletin CF6–80E1 S/B 72–0529, Revision 01, dated August 21, 2015.

(ii) Reserved.

(3) For GE service information identified in this AD, contact General Electric Company, GE Aviation, Room 285, 1 Neumann Way, Cincinnati, OH 45215; phone: 513–552–3272; email: *aviation.fleetsupport@ge.com*.

(4) You may view this service information at FAA, Engine & Propeller Directorate, 1200 District Avenue, Burlington, MA. For information on the availability of this material at the FAA, call 781–238–7125.

(5) You may view this service information at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal-register/cfr/ibr-locations.html*.

Issued in Burlington, Massachusetts, on March 16, 2016.

Ann C. Mollica,

Acting Manager, Engine & Propeller Directorate, Aircraft Certification Service.

[FR Doc. 2016–07377 Filed 4–1–16; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2015–5193; Directorate Identifier 2015–NE–35–AD; Amendment 39–18464; AD 2016–07–19]

RIN 2120–AA64

Airworthiness Directives; Technify Motors GmbH Reciprocating Engines

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: We are adopting a new airworthiness directive (AD) for certain Technify Motors GmbH (type certificate previously held by Thielert Aircraft Engines GmbH) TAE 125–02–99 and TAE 125–02–114 reciprocating engines. This AD requires removal of affected fuel feed pumps. This AD was prompted by reports of in-flight shutdowns on TAE 125–02 engines. We are issuing this AD to prevent failure of the fuel feed pump, damage to the engine, and damage to the airplane.

DATES: This AD becomes effective May 9, 2016.

ADDRESSES: For service information identified in this AD, contact Technify Motors GmbH, Platanenstrasse 14, D–09356 Sankt Egidien, Germany; phone: +49–37204–696–0; fax: +49–37204–696–2912; email: *support@continentaldiesel.de*. You may view this service information at the FAA, Engine & Propeller Directorate, 1200 District Avenue, Burlington, MA. For information on the availability of this material at the FAA, call 781–238–7125. It is also available on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2015–5193.

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2015–5193; or in person at the Docket Management Facility between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this AD, the mandatory continuing airworthiness information (MCAI), the regulatory evaluation, any comments received, and other information. The address for the Docket Office (phone: 800–647–5527) is Document Management Facility, U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: Philip Haberlen, Aerospace Engineer, Engine Certification Office, FAA, Engine & Propeller Directorate, 1200 District Avenue, Burlington, MA 01803; phone: 781–238–7770; fax: 781–238–7199; email: *philip.haberlen@faa.gov*.

SUPPLEMENTARY INFORMATION:

Discussion

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 by adding an AD that would apply to the specified products. The NPRM was published in the **Federal Register** on January 4, 2016 (81 FR 27). The NPRM proposed to correct an unsafe condition for the specified products. The MCAI states:

> In-flight shut down occurrences have been reported on aeroplanes equipped with TAE 125–02 engines. The initial results of the

investigations showed that a defective fuel feed pump was the probable cause of the engine failure.

You may obtain further information by examining the MCAI in the AD docket on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2015–5193.

Comments

We gave the public the opportunity to participate in developing this AD. We received no comments on the NPRM (81 FR 27, January 4, 2016).

Conclusion

We reviewed the available data and determined that air safety and the public interest require adopting this AD as proposed.

Related Service Information

Technify Motors GmbH has issued Operation & Maintenance Manual, CD–135/CD–155, OM–02–02, Issue 4, Revision No. 5, dated September 18, 2015. The service information describes procedures for removing and replacing the fuel feed pump.

Costs of Compliance

We estimate that this AD affects 190 engines installed on airplanes of U.S. registry. We also estimate that it will take about 0.5 hours per engine to comply with this AD. The average labor rate is $85 per hour. Pro-rated cost of the life limit reduction is about $160 per part. Based on these figures, we estimate the cost of this AD on U.S. operators to be $38,475.

Authority for This Rulemaking

Title 49 of the United States Code specifies the FAA's authority to issue rules on aviation safety. Subtitle I, section 106, describes the authority of the FAA Administrator. "Subtitle VII: Aviation Programs," describes in more detail the scope of the Agency's authority.

We are issuing this rulemaking under the authority described in "Subtitle VII, Part A, Subpart III, Section 44701: General requirements." Under that section, Congress charges the FAA with promoting safe flight of civil aircraft in air commerce by prescribing regulations for practices, methods, and procedures the Administrator finds necessary for safety in air commerce. This regulation is within the scope of that authority because it addresses an unsafe condition that is likely to exist or develop on products identified in this rulemaking action.

Regulatory Findings

We determined that this AD will not have federalism implications under Executive Order 13132. This AD will not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.

For the reasons discussed above, I certify this AD:

(1) Is not a "significant regulatory action" under Executive Order 12866,

(2) Is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979),

(3) Will not affect intrastate aviation in Alaska to the extent that it justifies making a regulatory distinction, and

(4) Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, under the authority delegated to me by the Administrator, the FAA amends 14 CFR part 39 as follows:

PART 39—AIRWORTHINESS DIRECTIVES

■ 1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by adding the following new airworthiness directive (AD):

2016–07–19 Technify Motors GmbH (Type Certificate previously held by Thielert Aircraft Engines GmbH): Amendment 39–18464; Docket No. FAA–2015–5193; Directorate Identifier 2015–NE–35–AD.

(a) Effective Date

This AD becomes effective May 9, 2016.

(b) Affected ADs

None.

(c) Applicability

This AD applies to all Technify Motors GmbH TAE 125–02–99 and TAE 125–02–114 reciprocating engines with a fuel feed pump, part number (P/N) 05–7312–K0073xx, or P/N 05–7312–K0133xx, where "xx" can be any number, installed.

(d) Reason

This AD was prompted by reports of in-flight shutdowns on TAE 125–02 engines. We are issuing this AD to prevent failure of the fuel feed pump, damage to the engine, and damage to the airplane.

(e) Actions and Compliance

Comply with this AD within the compliance times specified, unless already done. Remove from service each affected fuel feed pump before it exceeds 600 operating hours (OH) time in service (TIS) or within 110 OH after the effective date of this AD, whichever occurs later.

(f) Installation Prohibition

After the effective date of this AD, do not install onto any engine, any fuel feed pump, P/N 05–7312–K0073xx or P/N 05–7312–K0133xx, where "xx" can be any number, if the fuel feed pump has 600 hours or more TIS. If TIS of a fuel feed pump is unknown or has exceeded 600 hours TIS, then the fuel feed pump is not eligible for installation. Rebuilt, overhauled, or repaired fuel feed pumps or fuel feed pumps that lack a serial number, are not eligible for installation.

(g) Related Information

(1) For more information about this AD, Philip Haberlen, Aerospace Engineer, Engine Certification Office, FAA, Engine & Propeller Directorate, 1200 District Avenue, Burlington, MA 01803; phone: 781–238–7770; fax: 781–238–7199; email: *philip.haberlen@faa.gov.*

(2) Refer to MCAI European Aviation Safety Agency AD 2015–0189, dated September 21, 2015, for more information. You may examine the MCAI in the AD docket on the Internet at *http://www.regulations.gov* by searching for and locating it in Docket No. FAA–2015–5193.

(3) For service information identified in this AD, contact Technify Motors GmbH, Platanenstrasse 14, D–09356 Sankt Egidien, Germany; phone: +49–37204–696–0; fax: +49–37204–696–2912; email: *support@continentaldiesel.de.*

(4) You may view this service information at the FAA, Engine & Propeller Directorate, 1200 District Avenue, Burlington, MA. For information on the availability of this material at the FAA, call 781–238–7125.

(h) Material Incorporated by Reference

None.

Issued in Burlington, Massachusetts, on March 25, 2016.

Colleen M. D'Alessandro,

Manager, Engine & Propeller Directorate, Aircraft Certification Service.

[FR Doc. 2016–07376 Filed 4–1–16; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

15 CFR Parts 742, 750 and 774

[Docket No. 160204079–6079–01]

RIN 0694–AG77

Revisions to the Export Administration Regulations Based on the 2015 Missile Technology Control Regime Plenary Agreements

AGENCY: Bureau of Industry and Security, Commerce.

ACTION: Final rule.

SUMMARY: The Bureau of Industry and Security (BIS) is amending the Export Administration Regulations (EAR) to reflect changes to the Missile Technology Control Regime (MTCR) Annex that were agreed to by MTCR member countries at the October 2015 Plenary in Rotterdam, Netherlands, and the April 2015 Technical Experts Meeting (TEM) in Bern, Switzerland. This final rule makes conforming changes to correlate the Commerce Control List (CCL) (Supplement No. 1 to Part 774 of the EAR) and other EAR provisions with the current MTCR Annex. This final rule revises six Export Control Classification Numbers (ECCNs) to implement the changes that were agreed to at the meetings and to better align the MT controls on the CCL with the MTCR Annex. In addition, this final rule makes a change to MT licensing policy to be consistent with the MTCR Annex *General Minimum Software Note* and the MTCR Annex *General Technology Note* that specify that a license for MT controlled items should also authorize certain minimum "software" and "technology." This final rule also adds a new paragraph to the section of the EAR that specifies which changes to a license are considered "non-material." This amendment will facilitate this rule's revised MT licensing policy, which will apply to all licenses for MT controlled items, except when excluded by a license condition.

DATES: This rule is effective April 4, 2016.

FOR FURTHER INFORMATION CONTACT: Sharon Bragonje, Nuclear and Missile Technology Controls Division, Bureau of Industry and Security, Phone: (202) 482–0434; Email: *sharon.bragonje@bis.doc.gov*

SUPPLEMENTARY INFORMATION:

Background

The Missile Technology Control Regime (MTCR) is an export control arrangement among 34 nations, including most of the world's suppliers of advanced missiles and missile-related equipment, materials, software and technology. The regime establishes a common list of controlled items (the Annex) and a common export control policy (the Guidelines) that member countries implement in accordance with their national export controls. The MTCR seeks to limit the risk of proliferation of weapons of mass destruction by controlling exports of goods and technologies that could make a contribution to delivery systems (other than manned aircraft) for such weapons.

In 1993, the MTCR's original focus on missiles for nuclear weapons delivery was expanded to include the proliferation of missiles for the delivery of all types of weapons of mass destruction (WMD), *i.e.,* nuclear, chemical and biological weapons. Such proliferation has been identified as a threat to international peace and security. One way to address this threat is to maintain vigilance over the transfer of missile equipment, material, and related technologies usable for systems capable of delivering WMD. MTCR members voluntarily pledge to adopt the Regime's export Guidelines and to restrict the export of items contained in the Regime's Annex. The Regime's Guidelines are implemented through the national export control laws, regulations and policies of the regime members.

Amendments to the Export Administration Regulations

This final rule revises the Export Administration Regulations (EAR) to reflect changes to the MTCR Annex agreed to at the October 2015 Plenary in Rotterdam, Netherlands, and changes resulting from the April 2015 Technical Experts Meeting (TEM) in Bern, Switzerland.

Corresponding MTCR Annex references are provided below for the MTCR Annex changes agreed to at the meetings. This rule also makes two conforming changes to correlate the Commerce Control List (CCL) (Supplement No. 1 to Part 774 of the EAR) and other EAR provisions with the current MTCR Annex. These conforming changes are made to better align the MT controls on the CCL and other parts of the EAR with the MTCR Annex. In the explanation below for the revisions made in this rule, BIS identifies these changes as follows: "Rotterdam 2015 Plenary," "Bern 2015 TEM," and "Conforming Change to MTCR Annex" to assist the public in understanding the origin of each change included in this final rule.

In § 742.5 (Missile technology), this final rule adds a new paragraph (b)(3), and redesignates paragraphs (b)(3) and (b)(4), as paragraphs (b)(4) and (b)(5). This paragraph specifies that BIS licenses for MT controlled items also authorize the minimum "software" and "technology" for MT controlled items authorized under the same license, unless such minimum "software" and "technology" are specifically excluded by BIS on the license. This final rule also amends § 750.7(c)(1), which identifies "non-material changes [to a license that] do not require submission of a 'Replacement' license or any other notification to BIS." BIS has determined that a license applicant who does not seek a license for minimum "software" or "technology" for an MT controlled item need not seek a "Replacement" license if the applicant subsequently wishes to export such software or technology under the authority of the previously issued license. Such a use of the license would amount to a non-material change because the basic purpose of the license would be substantially undermined if the exporter could not promptly provide minimum necessary software or technology for the previously licensed MT item, an outcome that would be especially problematic in view of the 2015 regime changes referred to above. Moreover, in many instances, such exports of minimum necessary software and technology may already be made pursuant to License Exception TSU, set forth at § 740.13(a) and (c) (referring to minimum necessary operation software and technology), and notwithstanding the general prohibition against the use of License Exceptions for MT controlled items in § 740.2(a)(5)(i), which excludes a substantial number of MT items from the general prohibition under specified circumstances. Because BIS has previously determined that many such exports can be made pursuant to a License Exception, it stands to reason that the substantially similar MT "minimum necessary" software and technology exports at issue in this rule should be eligible for "non-material" treatment under § 750.7(c)(1). Accordingly, in this rule BIS establishes a new paragraph (c)(1)(x) to § 750.7 that applies to all MT licenses, except when a condition is placed on the license that excludes such minimum "software" and "technology." These changes are also consistent with the boilerplate text on BIS licenses, because the § 750.7(c)(1)(x) revision identifies the export, reexport or transfer (in-country) of minimum necessary MT controlled software and technology as a non-material change to a license.

BIS makes this change to MT licensing policy to be consistent with the MTCR Annex *General Minimum Software Note* and the MTCR Annex *General Technology Note* that specify that a license for MT controlled items should also authorize certain minimum "software" and "technology," which is being implemented by adding paragraph (c)(1)(x) to § 750.7 (which allows licensees to make such exports, reexports and transfers (in-country) pursuant to licenses for MT items) and paragraph (b)(3) to § 742.5 (which specifies this MT licensing policy) of the EAR. (MTCR Annex Change, *General Minimum Software Note,* Rotterdam 2015 Plenary; and MTCR Annex, *General Technology Note,* Conforming Change to MTCR Annex). The MTCR *General Minimum Software Note,* MTCR Annex *General Technology Note,* and the provisions this final rule adds to § 742.5 are consistent with the General Software Note and General Technology Note in Supplement No. 2 to part 774 and License Exception TSU under § 740.13, paragraphs (a) and (c). Note, however, that the implementation of these provisions is being done through the MT licensing policy, and the addition of paragraph (c)(1)(x) to § 750.7 described below, instead of through the use of a license exception.

BIS is presumptively including such minimum "software" and "technology" as part of the authorized scope for each license that includes MT controlled items. Therefore, applicants are not required to identify or provide any support documentation for such minimum "software" and "technology" on a license application for MT controlled items because such minimum "software" and "technology" is authorized within the scope of the license, pursuant to § 750.7(c)(1)(x), absent a license condition to the contrary. Applicants will be informed when such minimum "software" and/or "technology" in § 750.7(c)(1)(x) is excluded from the license by a BIS condition on the license, which will state the following: "This license does not authorize the export, reexport or transfer (in-country) of the minimum "software" and/or "technology" specified in paragraph (b)(3) of § 742.5." Absent this condition on the license for MT controlled items, the licensee may assume, consistent with § 750.7(c)(1)(x) and the licensing policy in § 742.5, that the approved license also authorizes the export (or reexport, or transfer (in-country) as applicable) to the same ultimate consignee(s) and end user(s) specified on the license of the minimum "software," excluding source code, controlled for MT reasons that is required for the installation, operation, maintenance or repair of the item and the "technology" required for the installation, operation, maintenance, or repair of the item in order to ensure the item's safe operation as originally intended. It is important to note that this licensing policy in paragraph (b)(3) of § 742.5 is only available for licensed exports (or reexports, or transfers (in-country)). For example, if an exporter wishes to export such minimum "software" and "technology" for a machine tool controlled for MT reasons, but there is not a license in place authorizing the export of the machine tool, then the export of such minimum "software" and "technology" would require a separate authorization under the EAR. This final rule adds a new Note to paragraph (b)(3), as described below, to make this clear.

This final rule also specifies in § 742.5, paragraph (b)(3) that a license for MT controlled items authorizes pursuant to § 750.7(c)(1)(x) the later export (or reexport, or transfer (in-country) as applicable) of "software" controlled for MT reasons intended to correct defects (bug fixes) in a previously legally exported item under a BIS license to the same ultimate consignee(s) and end user(s) specified on the license, provided that the capability and/or performance of the item are not otherwise enhanced and such "software" is not excluded from the license by a BIS condition on the license.

Lastly, for the changes to § 742.5, this final rule adds a Note to paragraph (b)(3) to clarify that for the limited number of ECCNs that are identified in § 740.2, paragraph (a)(5), License Exception TSU is available, and therefore exporters do not need to apply for a license from BIS for such minimum "software" or "technology." License Exception TSU is available provided such minimum "software" or "technology" is for an end use specified in that paragraph and meets the requirements of License Exception TSU and is not otherwise restricted under § 740.2 of the EAR. This Note to paragraph (b)(3) also clarifies that the licensing policy in paragraph (b)(3) is only available for licensed exports (or reexports, or transfers (in-country)), as noted above in the example for what minimum "software" and "technology" would require a separate authorization under the EAR. BIS took into account that certain minimum "software" and "technology" was already eligible for License Exception TSU when deciding to add paragraph (b)(3) to § 742.5 for the MT licensing policy and paragraph (c)(1)(x) to § 750.7 to allow for such changes to a license for MT items.

In § 750.7(c) (Changes to the license), this rule adds a new paragraph (c)(1)(x), as referenced above in the description of the changes this final rule makes to § 742.5. This paragraph (c)(1)(x) specifies that the export, reexport or transfer (in-country) of missile technology (MT) controlled minimum "software" and/or "technology" permitted pursuant to the missile technology licensing policy in § 742.5(b)(3) does not require a new license. This final rule also includes a parenthetical phrase in § 750.7(c)(1)(x) to cross reference § 742.5(b)(3)(i) to define the scope of eligible minimum "software" and "technology" and other limitations for licenses for MT controlled items.

Also in § 750.7, this final rule adds two notes to paragraph (c)(1)(x). The new Note 1 provides context for why BIS is implementing the MT licensing policy pursuant to § 750.7(c)(1)(x). Note 1 explains that the MT licensing policy is being implemented pursuant to paragraph (c)(1)(x) because it applies to all MT licenses. This new Note 1 also explains that this MT licensing policy does not apply when BIS places a condition on the specific license(s) which excludes the use of paragraph (c)(1)(x). This final rule also adds a Note 2 to paragraph (c)(1)(x) to provide guidance on the relationship between License Exception TSU and § 750.7(c)(1)(x), as well as § 742.5(b)(3). Note 2 is the same as the Note to paragraph (b)(3) to § 742.5, described above in this final rule, except for minor changes to reflect that the note is in § 750.7.

In addition, this final rule amends the Commerce Control List (CCL) to reflect changes to the MTCR Annex. Specifically, the following six ECCNs are affected by the changes set forth in this final rule:

ECCN 1B101. This final rule amends ECCN 1B101 by revising paragraph a and the introductory text of paragraph b in the List of Items Controlled section. (MTCR Annex Change, Category II: Item 6.B.1.a. and b., Bern 2015 TEM). Specifically, this final rule amends paragraph a to revise the term 'fiber-placement machines' to add the term "/tow" after the term "fiber" to clarify that the scope of the control parameter extends to placement machines regardless of whether they are named fiber-placement machines or tow-placement machines. This final rule revises the term "fiber-placement machines" to "fiber/tow-placement machines" in order to clarify that both these similar machines (two types of placement machines) are classified under this control parameter, regardless of the naming convention. This final rule revises paragraph b to add single quotation marks around the term 'tape-laying machines' to indicate that this term is defined for purposes of ECCN 1B101. This final rule also revises paragraph b to remove the phrase "and sheets," because it is no longer needed as part of the control parameter because the definition of tape now encompasses sheets. Lastly, this final rule adds four new Technical Notes to paragraphs a and b. The addition of these four Technical Notes provides a clear technical definition for 'fiber/tow-placement machines' and 'tape-laying machines' under new Technical Note 1, which is based on the minimum width of material that these machines are capable of laying (as specified further in the new Technical Notes 3 and 4 this final rule adds to ECCN 1B101). This final rule also adds a Technical Note 2 to provide an ECCN-specific definition of 'filament band,' which is also used as part of the definition of 'fiber/tow-placement machines' and 'tape-laying machines.' The purpose of this change to ECCN 1B101 is to more clearly define and differentiate between fiber/tow-placement machines and tape-laying machines. The only increase in license applications will be due to the clarification that tow-placement machines are definitively controlled by the MTCR.

ECCN 1C111. This final rule amends ECCN 1C111 by revising paragraphs b.4, b.9, d.9, and d.12 in the List of Items Controlled section to add CAS (Chemical Abstract Service) Numbers. CAS Numbers are numerical identifiers assigned by the Chemical Abstracts Service (CAS) to every chemical substance described in open scientific literature, including organic and inorganic compounds, minerals, isotopes and alloys. The inclusion of CAS Numbers will make it easier to identify the materials controlled under these "items" paragraphs of 1C111.

This final rule revises paragraph b.4 to add the CAS Number (CAS 25265–19–4/CAS 68891–50–9) after the material "polybutadiene acrylic acid acrylonitrile (PBAN)." (MTCR Annex Change, Category II: Item 4.C.5.e., Rotterdam 2015 Plenary). This change is not expected to have any impact on the number of license applications received by BIS. This final rule revises paragraph d.9 to add the CAS Number (CAS 6068–98–0) after the material "ethylene dihydrazine." (MTCR Annex Change, Category II: Item 4.C.2.b.8., Rotterdam 2015 Plenary). This change is not expected to have any impact on the number of license applications received by BIS.

This final rule revises paragraph d.12 to add the material "1,1-Dimethylhydrazinium azide (CAS 227955–52–4)," which is an alternative structure of the same chemical (Dimethylhydrazinium azide) classified under d.12. This final rule also revises paragraph d.12 to add "1,2-" before the material "Dimethylhydrazinium azide" and adds the CAS Number (CAS 299177–50–7) after the material "1,2-Dimethylhydrazinium azide." These changes will aid exporters and licensing officers by making it clear that both structures of the chemical are caught under paragraph d.12. (MTCR Annex Change, Category II: Item 4.C.2.b.12., Rotterdam 2015 Plenary). These changes are not expected to have any impact on the number of license applications received by BIS.

Lastly, for the changes to ECCN 1C111, this final rule revises paragraph d.19, to add the material "1,1-Diethylhydrazine nitrate (DEHN)," which is an alternative structure of the same chemical (Diethylhydrazine nitrate (DEHN)) classified under d.19. This final rule also revises paragraph d.19 to add "1,2-" before the material "Diethylhydrazine nitrate (DEHN)" and adds the CAS Number (CAS 363453–17–2) after the material "1,2-Dimethylhydrazinium nitrate." These changes will aid exporters and licensing officers and make clear that both structures of the chemical are caught under paragraph d.19. (MTCR Annex Change, Category II: Item 4.C.2.b.19., Rotterdam 2015 Plenary). These changes are not expected to have any impact on the number of license applications received by BIS.

ECCN 7A116. This final rule amends ECCN 7A116 to revise the heading to add the term "pneumatic" to the beginning of the control parameter to specify that pneumatic flight control systems are also controlled under ECCN 7A116. In addition, this final rule adds the phrase "and fly-by-light" to the parenthetical phrase "(including fly-by-wire systems)" to specify that the flight control systems classified under this ECCN include fly-by-wire and fly-by-light systems. (MTCR Annex Change, Category II: Item 10.A.1., Rotterdam 2015 Plenary). These changes are not expected to have any impact on the number of license applications received by BIS, because the commodities described in ECCN 7A116 are "subject to the ITAR."

ECCN 9A012. This final rule amends ECCN 9A012 by adding paragraph b.5 in the List of Items Controlled section to control pneumatic, hydraulic, mechanical, electro-optical, or electromechanical flight control systems (including fly-by-wire and fly-by-light systems) and attitude control equipment designed or modified for UAVs or drones controlled by ECCN 9A012, and capable of delivering at least 500 kilograms payload to a range of at least 300 km. (MTCR Annex Change, Category II: Item 10.A.1., Rotterdam 2015 Plenary). New paragraph b.5 is not intended to control UAVs or drones controlled by either USML paragraph VIII(a) or ECCN 9A610.a. This change is made to conform to the MTCR Annex and to address that certain MTCR Category I UAVs are on the CCL as a result of Export Control Reform.

This final rule also makes two conforming changes to ECCN 9A012 for the addition of paragraph 9A012.b.5. Specifically, this final rule is revising the "MT" paragraph in the License Requirements section to add an MT control for the new paragraph 9A012.b.5. This final rule is revising the Related Control Paragraph to include a reference to also see ECCN 9A610, because as noted above, similar types of systems and equipment are controlled under ECCN 9A610.w. This change is expected to result in an increase of 1–3 applications received annually by BIS.

ECCN 9A610. This final rule amends ECCN 9A610 by revising paragraph w in the List of Items Controlled section to add the term "pneumatic" to the beginning of the control parameter to specify that pneumatic flight control systems are also classified under this paragraph w. In addition, this final rule adds the phrase "and fly-by-light" to the parenthetical phrase "(including fly-by-wire systems)" to specify that the flight control systems classified under this paragraph w include fly-by-wire and fly-by-light systems. (MTCR Annex Change, Category II: Item 10.A.1., Rotterdam 2015 Plenary). These changes are a slight expansion of the control parameter by extending the control to include pneumatic flight control systems that are designed or modified for "missiles." This expansion of the control parameter is needed because state-of-the-art flight control systems may use optical fibers to provide digital communication between the flight control components. This change is expected to result in an increase of 1–3 applications received annually by BIS.

ECCN 9B106. This final rule amends ECCN 9B106 by revising paragraphs a.1 and the introductory text of paragraph a.2 in the List of Items Controlled section. The introductory text of paragraph a previously referred to both paragraphs a.1 and a.2 as flight conditions, which was not entirely accurate. Therefore, this final rule revises the introductory text of paragraph a by removing the phrase "simulating all of the following flight conditions" and adding in its place the phrase "having all of the following characteristics." (MTCR Annex Change, Category II: Item 15.B.4.a., Bern 2015 TEM). The altitude and temperature requirements specified in paragraphs a.1.a and a.2.a are flight conditions, but the incorporation or ability to incorporate a shaker unit or other vibration test equipment specified in paragraph a.2 is not strictly a flight condition, but a means of simulating a flight condition, so the introductory text of paragraph a needed to be updated for clarity. This clarification to the introductory text of paragraph a reflects the way this control has previously been interpreted by BIS. This final rule revises the control parameter in paragraph a.1.b to clarify the temperature range goes from below −50° C to above 125° C. The revision to paragraph a.1.b does not change the scope of control of 9B610 and this revision will better reflect the control text of the MTCR Annex. (MTCR Annex Change, Category II: Item 15.B.4.a.1.b., Conforming Change to MTCR Annex).

Lastly, as a non-substantive formatting change, this final rule revises paragraph a.2 to move the comma inside of the single quotation marks for the term 'bare table.' These changes are not expected to have any impact on the number of license applications received by BIS.

Savings Clause

Shipments of items removed from eligibility for a License Exception or export or reexport without a license (NLR) as a result of this regulatory action that were on dock for loading, on lighter, laden aboard an exporting or reexporting carrier, or enroute aboard a carrier to a port of export or reexport, on April 4, 2016, pursuant to actual orders for export or reexport to a foreign destination, may proceed to that destination under the previous eligibility for a License Exception or export or reexport without a license (NLR) so long as they are exported or reexported before May 4, 2016. Any such items not actually exported or reexported before midnight, on May 4, 2016, require a license in accordance with this rule.

Export Administration Act

Although the Export Administration Act expired on August 20, 2001, the President, through Executive Order 13222 of August 17, 2001, 3 CFR, 2001 Comp., p. 783 (2002), as amended by Executive Order 13637 of March 8, 2013, 78 FR 16129 (March 13, 2013) and as extended by the Notice of August 7, 2015, 80 FR 48233 (August 11, 2015), has continued the Export Administration Regulations in effect under the International Emergency Economic Powers Act. BIS continues to carry out the provisions of the Export Administration Act, as appropriate and to the extent permitted by law, pursuant to Executive Order 13222, as amended by Executive Order 13637.

Regulatory Requirements

1. Executive Orders 13563 and 12866 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distribute impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This final rule has been designated a "significant regulatory action," although not economically significant, under section 3(f) of Executive Order 12866.

2. Notwithstanding any other provision of law, no person may be required to respond to or be subject to a penalty for failure to comply with a collection of information, subject to the requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) (PRA), unless that collection of information displays a currently valid Office of Management and Budget (OMB) Control Number. This regulation involves collections previously approved by OMB under control number 0694–0088, Simplified Network Application Processing System, which includes, among other things, license applications and carries a burden estimate of 43.8 minutes for a manual or electronic submission. Total burden hours associated with the PRA and OMB control number 0694–0088 are expected to increase slightly as a result of this rule. The expected increase in total burden hours is expected to be minimal and to not exceed the existing estimates for burden hours associated with the PRA and OMB control number 0694–0088. You may send comments regarding the collection of information associated with this rule, including suggestions for reducing the burden, to Jasmeet K. Seehra, Office of Management and Budget (OMB), by email to *Jasmeet_K._Seehra@omb.eop.gov*, or by fax to (202) 395–7285.

3. This rule does not contain policies with Federalism implications as that term is defined under E.O. 13132.

4. The provisions of the Administrative Procedure Act (5 U.S.C. 553) requiring notice of proposed rulemaking, the opportunity for public participation, and a delay in effective date, are inapplicable because this regulation involves a military and foreign affairs function of the United States (5 U.S.C. 553(a)(1)). Immediate implementation of these amendments fulfills the United States' international commitments to the MTCR. The MTCR contributes to international peace and security by promoting greater responsibility in transfers of missile technology items that could make a contribution to delivery systems (other than manned aircraft) for weapons of mass destruction. The MTCR consists of 34 member countries that act on a consensus basis and the changes set forth in this rule implement agreements reached by MTCR member countries at the October 2015 Plenary in Rotterdam, Netherlands and pursuant to the April 2015 Technical Experts Meeting in Bern, Switzerland. Since the United States is a significant exporter of the items in this rule, implementation of this provision is necessary for the MTCR to achieve its purpose. Moreover, it is in the public interest to waive the notice and comment requirements, as any delay in implementing this rule will disrupt the movement of affected items globally because of disharmony between export control measures implemented by MTCR members. Export controls work best when all countries implement the same export controls in a timely manner. If this rulemaking were delayed to allow for notice and comment and a 30 day delay in effectiveness, it would prevent the United States from fulfilling its commitment to the MTCR in a timely manner, would injure the credibility of the United States in this and other multilateral regimes, and may impair the international communities' ability to effectively control the export of certain potentially national- and international-security-threatening materials.

Further, no other law requires that a notice of proposed rulemaking and an opportunity for public comment be given for this final rule. Because a notice of proposed rulemaking and an opportunity for public comment are not required to be given for this rule under the Administrative Procedure Act or by any other law, the analytical requirements of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) are not applicable. Therefore, this regulation is issued in final form.

List of Subjects

15 CFR Part 742

Exports, Terrorism.

15 CFR Part 750

Administrative practice and procedure, Exports, Reporting and recordkeeping requirements.

15 CFR Part 774

Exports, Reporting and recordkeeping requirements.

Accordingly, parts 742, 750 and 774 of the Export Administration Regulations (15 CFR parts 730–774) are amended as follows:

PART 742—[AMENDED]

■ 1. The authority citation for 15 CFR part 742 continues to read as follows:

Authority: 50 U.S.C. 4601 *et seq.;* 50 U.S.C. 1701 *et seq.;* 22 U.S.C. 3201 *et seq.;* 42 U.S.C. 2139a; 22 U.S.C. 7201 *et seq.;* 22 U.S.C. 7210; Sec. 1503, Pub. L. 108–11, 117 Stat. 559; E.O. 12058, 43 FR 20947, 3 CFR, 1978 Comp., p. 179; E.O. 12851, 58 FR 33181, 3 CFR, 1993 Comp., p. 608; E.O. 12938, 59 FR 59099, 3 CFR, 1994 Comp., p. 950; E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; Presidential Determination 2003–23, 68 FR 26459, 3 CFR, 2004 Comp., p. 320; Notice of August 7, 2015, 80 FR 48233 (August 11, 2015); Notice of November 12, 2015, 80 FR 70667 (November 13, 2015).

■ 2. Section 742.5 is amended:

■ a. By redesignating paragraphs (b)(3) and (4) as paragraphs (b)(4) and (5), respectively; and

■ b. By adding a new paragraph (b)(3) to read as follows:

§ 742.5 Missile technology.

* * * * *

(b) * * *

(3)(i) Consistent with the MTCR Annex *General Minimum Software Note,* MTCR Annex *General Technology Note* and § 750.7(c)(1)(x) of the EAR, the approval of any item controlled for MT reasons on a BIS license also authorizes the export, reexport, or transfer (in-country) to the same ultimate consignee(s) and end user(s) specified on the license of the minimum "software," excluding source code, controlled for MT reasons that is required for the installation, operation, maintenance or repair of the item and the "technology" required for the installation, operation, maintenance, or repair of the item in order to ensure the item's safe operation as originally intended. The approval of any item controlled for MT reasons on a BIS license also authorizes the later export, reexport, or transfer (in-country) of "software" controlled for MT reasons intended to correct defects (bug fixes) in a previously legally exported item under a BIS license to the same ultimate consignee(s) and end user(s) specified on the license, provided that the capability and/or performance of the item are not otherwise enhanced. This MT licensing policy is implemented concurrent with § 750.7(c)(1)(x) because it applies to all MT licenses, except when a condition is placed on the license which excludes the use of § 750.7(c)(1)(x), as described in paragraph (b)(3)(ii) of this section.

(ii) Applicants are not required to identify or provide any support documentation for such minimum "software" or "technology" on a license application for MT controlled items because such minimum "software" or "technology" is authorized within the scope of the license, consistent with § 750.7(c)(1)(x). Applicants will be informed when such minimum "software" and/or "technology" in § 750.7(c)(1)(x) is excluded from the license by a BIS condition on the license, which will state the following: "*This license does not authorize the export, reexport or transfer (in-country) of the minimum "software" and/or "technology" specified in paragraph (c)(1)(x) of § 750.7 (See paragraph (b)(3) of § 742.5).*"

Note to paragraph (b)(3): License Exception TSU under § 740.13 of the EAR is available for the ECCNs controlled for MT reasons specified in paragraph (a)(5) in § 740.2, provided the software or technology is for an end use specified in that paragraph and meets the requirements of License Exception TSU. (See §§ 740.2(a)(5) and 740.13). The licensing policy in paragraph (b)(3) is only available for licensed exports (or reexports, or transfers (in-country)).

* * * * *

PART 750—[AMENDED]

■ 3. The authority citation for 15 CFR part 750 continues to read as follows:

Authority: 50 U.S.C. 4601 *et seq.;* 50 U.S.C. 1701 *et seq.;* Sec 1503, Pub. L. 108–11, 117 Stat. 559; E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; E.O. 13637, 78 FR 16129, 3 CFR, 2013 Comp., p. 223; Presidential Determination 2003–23, 68 FR 26459, 3 CFR, 2004 Comp., p. 320; Notice of August 7, 2015, 80 FR 48233 (August 11, 2015).

■ 4. Section 750.7 is amended:

■ a. By removing the period at the end of paragraph (c)(1)(ix) and adding in its place "; or"; and

■ b. By adding paragraph (c)(1)(x) to read as follows:

§ 750.7 Issuance of licenses.

* * * * *

(c) * * *

(1) * * *

(x) Export, reexport or transfer (in-country) of missile technology (MT) controlled minimum necessary "software" and/or "technology" permitted pursuant to the missile technology licensing policy in § 742.5(b)(3) of the EAR. (*See* § 742.5(b)(3)(i) for the scope of eligible minimum "software" and/or "technology" and other limitations for licenses for MT controlled items).

Note 1 to paragraph (c)(1)(x): This MT licensing policy is implemented pursuant to paragraph (c)(1)(x) of this section because it applies to all MT licenses, except when a condition is placed on the license which excludes the use of paragraph (c)(1)(x) of this section, as described in § 742.5(b)(3)(ii).

Note 2 to paragraph (c)(1)(x): License Exception TSU under § 740.13 of the EAR is available for the ECCNs controlled for MT reasons specified in paragraph (a)(5) in § 740.2, provided the software or technology is for an end use specified in that paragraph and meets the requirements of License Exception TSU. (See §§ 740.2(a)(5) and 740.13). The licensing policy in § 742.5(b)(3) is only available for licensed exports (or reexports, or transfers (in-country)).

* * * * *

PART 774—[AMENDED]

■ 5. The authority citation for 15 CFR part 774 continues to read as follows:

Authority: 50 U.S.C. 4601 *et seq.;* 50 U.S.C. 1701 *et seq.;* 10 U.S.C. 7420; 10 U.S.C. 7430(e); 22 U.S.C. 287c, 22 U.S.C. 3201 *et seq.;* 22 U.S.C. 6004; 30 U.S.C. 185(s), 185(u); 42 U.S.C. 2139a; 43 U.S.C. 1354; 15 U.S.C. 1824a; 50 U.S.C. 4305; 22 U.S.C. 7201 *et seq.;* 22 U.S.C. 7210; E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; Notice of August 7, 2015, 80 FR 48233 (August 11, 2015).

■ 6. In Supplement No. 1 to part 774 (the Commerce Control List), Category 1—Special Materials and Related Equipment, Chemicals, "Microorganisms" and "Toxins," Export Control Classification Number (ECCN) 1B101 is amended:

■ a. By revising "items" paragraphs a and b in the List of Items Controlled section; and

■ b. By adding Technical Notes for paragraphs a and b at the end of the "items" paragraph b in the List of Items Controlled section to read as follows:

Supplement No. 1 to Part 774—The Commerce Control List

* * * * *

1B101 Equipment, other than that controlled by 1B001, for the "production" of structural composites, fibers, prepregs or preforms, usable for rockets, missiles, or unmanned aerial vehicles capable of achieving a "range" equal to or greater than 300 km and their subsystems, as follows (see List of Items Controlled); and "specially designed" "parts," "components" and "accessories" therefor.

* * * * *

List of Items Controlled

* * * * *

Items:

a. Filament winding machines or 'fiber/tow-placement machines,' of which the motions for positioning, wrapping and winding fibers can be coordinated and programmed in three or more axes, designed to fabricate composite structures or laminates from fibrous or filamentary materials, and coordinating and programming controls;

b. 'Tape-laying machines' of which the motions for positioning and laying tape can be coordinated and programmed in two or more axes, designed for the manufacture of composite airframe and missile structures;

Technical Notes for paragraphs a and b: For the purposes of 1B101.a. and 1B101.b., the following definitions apply:

1. 'Fiber/tow-placement machines' and 'tape-laying machines' are machines that perform similar processes that use computer-guided heads to lay one or several 'filament bands' onto a mold to create a part or a structure. These machines have the ability to cut and restart individual 'filament band' courses during the laying process.

2. A 'filament band' is a single continuous width of fully or partially resin-impregnated tape, tow, or fiber. Fully or partially resin-impregnated 'filament bands' include those coated with dry powder that tacks upon heating.

3. 'Fiber/tow-placement machines' have the ability to place one or more 'filament bands' having widths less than or equal to 25.4 mm. This refers to the minimum width of material the machine can place, regardless of the upper capability of the machine.

4. 'Tape-laying machines' have the ability to place one or more 'filament bands' having widths less than or equal to 304.8 mm, but cannot place 'filament bands' with a width equal to or less than 25.4 mm. This refers to the minimum width of material the machine can place, regardless of the upper capability of the machine.

* * * * *

■ 7. In Supplement No. 1 to part 774 (the Commerce Control List), Category 1—Special Materials and Related Equipment, Chemicals, "Microorganisms" and "Toxins," Export Control Classification Number (ECCN) 1C111 is amended:

■ a. By revising "items" paragraph b.4 in the List of Items Controlled section; and

■ b. By revising "items" paragraphs d.9, d.12 and d.19 in the List of Items Controlled section to read as follows:

1C111 Propellants and constituent chemicals for propellants, other than those specified in 1C011, as follows (see List of Items Controlled).

* * * * *

List of Items Controlled

* * * * *

Items:

* * * * *

b. * * *

* * * * *

b.4. Polybutadiene acrylic acid acrylonitrile (PBAN) (CAS 25265–19–4/ CAS 68891–50–9);

* * * * *

d. * * *

* * * * *

d.9. Ethylene dihydrazine (CAS 6068–98–0);

* * * * *

d.12. 1,1-Dimethylhydrazinium azide (CAS 227955–52–4)/1,2-Dimethylhydrazinium azide (CAS 299177–50–7);

* * * * *

d.19. 1,1-Diethylhydrazine nitrate (DEHN)/1,2-Diethylhydrazine nitrate (DEHN) (CAS 363453–17–2);

* * * * *

■ 8. In Supplement No. 1 to part 774 (the Commerce Control List), Category 7— Navigation and Avionics, Export Control Classification Number (ECCN) 7A116 is amended by revising the heading to read as follows:

7A116 Flight control systems (pneumatic, hydraulic, mechanical, electro-optical, or electro-mechanical flight control systems (including fly-by-wire and fly-by-light systems) and attitude control equipment) designed or modified for "missiles". (These items are "subject to the ITAR". See 22 CFR parts 120 through 130.)

■ 9. In Supplement No. 1 to part 774 (the Commerce Control List), Category 9—Aerospace and Propulsion, Export Control Classification Number (ECCN) 9A012 is amended:

■ a. By revising the "MT" paragraph in the table in the License Requirements section;

■ b. By revising the Related Controls paragraph in the List of Items Controlled section; and

■ c. By adding "items" paragraph b.5 in the List of Items Controlled section to read as follows:

9A012 Non-military "Unmanned Aerial Vehicles," ("UAVs"), unmanned "airships", related equipment and "components", as follows (see List of Items Controlled).

License Requirements

Reason for Control:

* * * * *

Control(s)	Country Chart (see sup No. 1 to part 738)
* * *	* *
MT applies to non-military Unmanned Air Vehicle (UAVs) and Remotely Piloted Vehicles (RPVs) that are capable of a maximum range of at least 300 kilometers (km), regardless of payload, and 9A012.b.5.	MT Column 1.
* * *	* *

* * * * *

List of Items Controlled

* * * * *

Related Controls: See the U.S. Munitions List Category VIII (22 CFR part 121). Also see ECCN 9A610 and § 744.3 of the EAR.

* * * * *

Items:

* * * * *

b. * * *

* * * * *

b.5. Pneumatic, hydraulic, mechanical, electro-optical, or electromechanical flight control systems (including fly-by-wire and fly-by-light systems) and attitude control equipment designed or modified for UAVs or drones controlled by ECCN 9A012., and capable of delivering at least 500 kilograms payload to a range of at least 300 km.

* * * * *

■ 10. In Supplement No. 1 to part 774 (the Commerce Control List), Category 9—Aerospace and Propulsion, Export Control Classification Number (ECCN) 9A610 is amended by revising "items" paragraph w in the List of Items Controlled section to read as follows:

9A610 Military aircraft and related commodities, other than those enumerated in 9A991.a (see List of Items Controlled).

* * * * *

List of Items Controlled

* * * * *

Items:

* * * * *

w. Pneumatic, hydraulic, mechanical, electro-optical, or electromechanical flight control systems (including fly-by-wire and fly-by-light systems) and attitude control equipment designed or modified for UAVs or drones controlled by either USML paragraph VIII(a) or ECCN 9A610.a., and capable of delivering at least 500 kilograms payload to a range of at least 300 km.

* * * * *

■ 11. In Supplement No. 1 to part 774 (the Commerce Control List), Category 9—Aerospace and Propulsion, Export Control Classification Number (ECCN) 9B106 is amended:

■ a. By revising the introductory text of "items" paragraph a in the List of Items Controlled section;

■ b. By revising "items" paragraph a.1 in the List of Items Controlled section; and

■ c. By revising the introductory text of items paragraph a.2 to read as follows:

9B106 Environmental chambers usable for rockets, missiles, or unmanned aerial vehicles capable of achieving a "range" equal to or greater than 300 km and their subsystems, as follows (see List of Items Controlled).

* * * * *

List of Items Controlled

* * * * *

Items:

* * * * *

a. Environmental chambers having all of the following characteristics:

a.1. Capable of simulating any of the following flight conditions:

a.1.a. Altitude equal to or greater than 15,000 m; or

a.1.b. Temperature range from below −50 °C to above 125 °C; and

a.2. Incorporating, or designed or modified to incorporate, a shaker unit or other vibration test equipment to produce vibration environments equal to or greater than 10 g rms, measured 'bare table,' between 20 Hz and 2 kHz while imparting forces equal to or greater than 5 kN;

* * * * *

Dated: March 29, 2016.

Kevin J. Wolf,

Assistant Secretary for Export Administration.

[FR Doc. 2016–07601 Filed 4–1–16; 8:45 am]

BILLING CODE 3510–33–P

SOCIAL SECURITY ADMINISTRATION

20 CFR Part 404

[Docket No. SSA–2015–0018]

RIN 0960–AH85

Extension of the Workers' Compensation Offset From Age 65 to Full Retirement Age—Achieving a Better Life Experience (ABLE) Act

AGENCY: Social Security Administration.

ACTION: Final rule.

SUMMARY: This final rule adopts, with one additional change, the notice of proposed rulemaking (NPRM) that we published in the **Federal Register** on January 4, 2016. This final rule revises our rules by incorporating changes made by the ABLE Act to section 224(a) of the Social Security Act (Act). Under this final rule, the age at which disability insurance benefits (DIB) are no longer subject to reduction (offset) based on receipt of workers' compensation or public disability benefits (WC/PDB) changes from age 65 to the day the individual attains full retirement age.

DATES: This final rule is effective April 4, 2016.

FOR FURTHER INFORMATION CONTACT: Dean Dwight, Office of Income Security Programs, Social Security Administration, 6401 Security Boulevard, Baltimore, MD 21235–6401, (410) 966–7161. For information on eligibility or filing for benefits, call our national toll-free number, 1–800–772–1213 or TTY 1–800–325–0778, or visit our Internet site, Social Security Online, at *http://www.socialsecurity.gov.*

SUPPLEMENTARY INFORMATION: This final rule adopts, with one additional change discussed below, the NPRM that we published in the **Federal Register** on January 4, 2016.[1]

Background

We explained our reasons for proposing the rule that we are now adopting as a final rule in the preamble to the NPRM (81 FR at 41), and we incorporate that discussion here.

In addition to the changes we proposed in the NPRM, we are making one additional change to our rules. The fourth sentence of current section 404.317 states, "Your monthly benefit amount may be reduced if you receive workers' compensation or public disability payments before you become 65 years old as described in § 404.408." For consistency with the other changes we are making to our rules, we are also revising the reference to "before you become 65 years old" in section 404.317 to "before you attain full retirement age."

Public Comments

In the NPRM, we provided a 30-day comment period, which ended on February 3, 2016. We received one comment. The comment came from a member of the public. After carefully considering the comment, we are adopting our proposed rule (81 FR 41–42) as a final rule.

Comment: The one comment we received stated, "Not fair there are plenty who have worked very hard to retire perhaps when a certain group progresses then reconsider changing the policy."

Response: We did not adopt the comment. The changes we are making are mandated by statute. We have no discretion to reconsider the policy in the absence of a statutory change.

Regulatory Procedures

Good Cause for Effective Date

We find good cause for dispensing with the 30-day delay in the effective date of this final rule. 5 U.S.C. 553(d)(3). For the reasons discussed above and in the preamble to the NPRM (81 FR at 41), we are making minor changes to our current rules to incorporate changes made by section 201 of the ABLE Act[2] to section 224(a) of the Act. The provision in the ABLE Act applies to any individual whose DIB payment is offset for WC/PDB and who attains age 65 on or after December 19, 2015.[3] Because the changes we are making in this final rule only reflect a statutory change that is already in effect, we find that it is unnecessary to delay the effective date of our final rule.

Executive Order 12866 as Supplemented by Executive Order 13563

We consulted with the Office of Management and Budget (OMB) and determined that this final rule does not meet the criteria for a significant regulatory action under Executive Order 12866 as supplemented by Executive Order 13563. Thus, OMB did not review the final rule.

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[1] 81 FR 41 (2016) (*https://www.gpo.gov/fdsys/pkg/FR-2016-01-04/pdf/2015-33036.pdf*).

[2] Public Law 113–295, Division B, § 201, 128 Stat. 4010, 4064.

[3] *Id.*, § 201(b). Section 201(b) specifies that the amendment to section 224(a) of the Act "shall apply with respect to any individual who attains 65 years of age on or after the date that is 12 months after the date of the enactment of this Act." Congress enacted the ABLE on December 19, 2014. *Id.* Consequently, the statutory amendment applies to an individual who attains age 65 on or after December 19, 2015. *Id.*

Regulatory Flexibility Act

We certify that this final rule will not have a significant economic impact on a substantial number of small entities because it applies to individuals only. Thus, a regulatory flexibility analysis is not required under the Regulatory Flexibility Act, as amended.

Paperwork Reduction Act

These rules do not create any new or affect any existing collections and, therefore, do not require Office of Management and Budget approval under the Paperwork Reduction Act.

(Catalog of Federal Domestic Assistance Program No. 96.006, Supplemental Security Income.)

List of Subjects in 20 CFR Part 404

Administrative practice and procedure; Blind; Disability benefits; Government employees; Old-age, Survivors and Disability Insurance; Reporting and recordkeeping requirements; Social security.

Dated: March 25, 2016.

Carolyn W. Colvin,

Acting Commissioner of Social Security.

For the reasons set forth in the preamble, we amend subparts D and E of part 404 of title 20 of the Code of Federal Regulations as set forth below:

PART 404—FEDERAL OLD-AGE, SURVIVORS AND DISABILITY INSURANCE (1950–).

Subpart D—[Amended]

■ 1. The authority citation for subpart D of part 404 continues to read as follows:

Authority: Secs. 202, 203(a) and (b), 205(a), 216, 223, 225, 228(a)–(e), and 702(a)(5) of the Social Security Act (42 U.S.C. 402, 403(a) and (b), 405(a), 416, 423, 425, 428(a)–(e), and 902(a)(5)).

■ 2. Amend § 404.317 by revising the fourth sentence to read as follows:

§ 404.317 How is the amount of my disability benefit calculated?

* * * Your monthly benefit amount may be reduced if you receive workers' compensation or public disability payments before you attain full retirement age (as defined in § 404.409) (see § 404.408). * * *

Subpart E—[Amended]

■ 3. The authority citation for subpart E of part 404 continues to read as follows:

Authority: Secs. 202, 203, 204(a) and (e), 205(a) and (c), 216(l), 222(c), 223(e), 224, 225, 702(a)(5), and 1129A of the Social Security Act (42 U.S.C. 402, 403, 404(a) and (e), 405(a) and (c), 416(l), 422(c), 423(e), 424a, 425, 902(a)(5), and 1320a–8a); 48 U.S.C. 1801.

■ 4. In § 404.401, revise paragraph (a)(4) to read as follows:

§ 404.401 Deduction, reduction, and nonpayment of monthly benefits or lump-sum death payments.

* * * * *

(a) * * *

(4) An individual under full retirement age (see § 404.409) is concurrently entitled to disability insurance benefits and to certain public disability benefits (see § 404.408);

* * * * *

■ 5. In § 404.408, revise paragraph (a)(2)(ii) to read as follows:

§ 404.408 Reduction of benefits based on disability on account of receipt of certain other disability benefits provided under Federal, State, or local laws or plans.

* * * * *

(a) * * *

(2) * * *

(ii) The individual has not attained full retirement age as defined in § 404.409.

* * * * *

[FR Doc. 2016–07602 Filed 4–1–16; 8:45 am]

BILLING CODE 4191–02–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 56

[Docket No. FDA–2015–N–5052]

Administrative Actions for Noncompliance; Lesser Administrative Actions

AGENCY: Food and Drug Administration, HHS.

ACTION: Direct final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the regulation describing lesser administrative actions that may be imposed on an Institutional Review Board (IRB) that has failed to comply with FDA's IRB regulations. We are clarifying that FDA may require the IRB to withhold approval of new FDA-regulated studies, stop the enrollment of new subjects in ongoing studies, and terminate ongoing studies, or any combination of these actions until the noncompliance with FDA's IRB regulations is corrected. We are taking this action to ensure clarity and improve the accuracy of the regulations.

DATES: This rule is effective August 17, 2016. Submit electronic or written comments on this direct final rule or its companion proposed rule by June 20, 2016.

ADDRESSES: You may submit comments as follows:

Electronic Submissions

Submit electronic comments in the following way:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to *http://www.regulations.gov* will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else's Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on *http://www.regulations.gov.*
- If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission and in the manner detailed (see "Written/Paper Submissions" and "Instructions").

Written/Paper Submissions

Submit written/paper submissions as follows:

- *Mail/Hand delivery/Courier (for written/paper submissions):* Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.
- For written/paper comments submitted to the Division of Dockets Management, FDA will post your comment, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in "Instructions."

Instructions: All submissions received must include the Docket No. FDA–2015–N–5052 for "Subpart E—Administrative Actions for Noncompliance; Lesser Administrative Actions." Received comments will be placed in the docket and, except for those submitted as "Confidential Submissions," publicly viewable at *http://www.regulations.gov* or at the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

- *Confidential Submissions*—To submit a comment with confidential information that you do not wish to be made publicly available, submit your comments only as a written/paper submission. You should submit two copies total. One copy will include the information you claim to be confidential with a heading or cover note that states "THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION." The Agency will review this copy, including the claimed confidential information, in its consideration of comments. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on *http://www.regulations.gov.* Submit both copies to the Division of Dockets Management. If you do not wish your name and contact information to be made publicly available, you can provide this information on the cover sheet and not in the body of your comments and you must identify this information as "confidential." Any information marked as "confidential" will not be disclosed except in accordance with 21 CFR 10.20 and other applicable disclosure law. For more information about FDA's posting of comments to public dockets, see 80 FR 56469, September 18, 2015, or access the information at: *http://www.fda.gov/regulatoryinformation/dockets/default.htm.*

Docket: For access to the docket to read background documents or the electronic and written/paper comments received, go to *http://www.regulations.gov* and insert the docket number, found in brackets in the heading of this document, into the "Search" box and follow the prompts and/or go to the Division of Dockets Management, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Sheila Brown, Office of Good Clinical Practice, Office of Special Medical Programs, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 32, Rm. 5129, Silver Spring, MD 20993–0002, 301–796–6563.

SUPPLEMENTARY INFORMATION:

I. Background

FDA is amending § 56.120(b) (21 CFR 56.120(b)), which describes lesser administrative actions that the Agency may impose on an IRB until the IRB takes appropriate action to correct the IRB's noncompliance. We are publishing this direct final rule because it is intended to clarify an existing regulation, and we do not anticipate any significant adverse comment regarding this amendment to § 56.120(b). Specifically, this direct final rule would amend § 56.120(b) by clarifying that FDA has authority to require the IRB to withhold approval of new FDA-regulated studies conducted at the institution or reviewed by the IRB, direct that no new subjects be added to ongoing studies, and terminate ongoing studies provided that doing so would not endanger study subjects.

This amendment also renumbers current paragraphs (b)(4) and (c) as paragraphs (c) and (d), respectively, and inserts "FDA may" into newly designated paragraph (c) so that it is a complete sentence.

FDA first proposed requirements for the composition and operations of institutional review committees in the "Proposed Investigational Device Exemptions," published in the **Federal Register** of August 20, 1976 (41 FR 35282; "Proposed IDE Rule"). In that document, FDA proposed disqualification procedures for institutional review committees and requested comments on the proposed procedures and other possible administrative actions that FDA might take against a committee that is not in compliance with the regulations (41 FR 35282 at 35293). FDA also stated its intention to publish uniform, Agency-wide regulations governing clinical investigations at a later date, including requirements governing institutional review committees (41 FR 35282 at 35283).

Subsequently, FDA published "Standards for Institutional Review Boards for Clinical Investigations" on August 8, 1978 (43 FR 35186; "Proposed IRB Standards"). Comments on implementing institutional review requirements received in response to the Proposed IDE Rule were reviewed and utilized in preparing the Proposed IRB Standards (43 FR 35186 at 35187). In the Proposed IRB Standards, FDA proposed that disqualification would be used only if the Commissioner of Food and Drugs finds that: (1) The IRB failed to comply with one or more of the standards for IRBs in part 56 or other supplemental requirements in the investigational new drug or investigational device exemptions (IDE) regulations; (2) the noncompliance adversely affects the validity of the data or the rights or safety of the human subjects; and (3) other lesser regulatory actions (*e.g.,* warnings or rejection of data from individual clinical investigations) have not been or probably will not be adequate in achieving compliance (43 FR 35186 at 35195).

FDA received numerous comments to the Proposed IRB Standards, and addressed those comments in the **Federal Register** of January 27, 1981 (46 FR 8958), "Protection of Human Subjects: Standards for Institutional Review Boards for Clinical Investigations, Final Rule." Specifically, several comments suggested that any lesser regulatory actions should be listed (46 FR 8958 at 8973). FDA accepted these comments and revised § 56.120(b) to set forth the lesser administrative actions that the Agency may take if FDA finds deficiencies in the operation of an IRB and to describe the circumstances in which these lesser administrative actions may be used by the Agency. FDA's longstanding interpretation of § 56.120(b) is that FDA may impose these restrictions on a noncompliant IRB until the IRB takes appropriate corrective action. The text of the regulation, however, suggests that it is the Agency that would withhold approval of studies that have been reviewed by a noncompliant IRB, rather than authorizing FDA to direct the IRB to stop approving new studies until the IRB comes back into compliance.

This direct final rule amends § 56.120(b) to read, in addition, until the IRB or the parent institution takes appropriate corrective action, the Agency may require the IRB to withhold approval of new studies, direct that no new subjects be added to ongoing studies, or terminate ongoing studies. This will ensure that those activities are suspended until the IRB takes appropriate corrective action to address its noncompliance. We believe revising § 56.120(b) as described in this document will improve the clarity and accuracy of the regulations. We are also renumbering § 56.120(b)(4) as § 56.120(c), and § 56.120(c) as § 56.120(d). We are inserting "FDA may" into newly designated § 56.120(c) so that it is a complete sentence.

FDA may notify relevant State and Federal regulatory Agencies when warranted to assure that organizations with a need to know about the IRB's apparent noncompliance are appropriately informed. The revision would eliminate confusion by stating clearly that FDA is authorized to notify others about the IRB's noncompliance. We believe these changes will ensure clarity and improve the accuracy of the regulations.

II. Procedures for Issuing a Direct Final Rule

In the **Federal Register** of November 21, 1997 (62 FR 62466), FDA announced the availability of the guidance document entitled "Guidance for FDA and Industry: Direct Final Rule Procedures" [1] that described when and how we will employ direct final rulemaking. We believe that this rule is appropriate for direct final rulemaking because it is intended to clarify an existing regulation. We anticipate no significant adverse comment.

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[1] *http://www.fda.gov/regulatoryinformation/guidances/ucm125166.htm.*

Consistent with FDA's direct final rulemaking procedures, we are publishing a companion proposed rule elsewhere in this issue of the **Federal Register**. That proposed rule is identical in substance to this direct final rule. The companion proposed rule will serve the purpose of issuing a proposed rule under usual notice-and-comment procedures in the event we withdraw this direct final rule because we receive significant adverse comment. The comment period for this direct final rule runs concurrently with the comment period of the companion proposed rule. We will consider any comments that we receive in response to the companion proposed rule to be comments also regarding this direct final rule and vice versa.

If FDA receives any significant adverse comment, we will withdraw this direct final rule before its effective date by publishing a notice in the **Federal Register** within 30 days after the comment period ends. A significant adverse comment is one that explains why the rule would be inappropriate (including challenges to the rule's underlying premise or approach), or would be ineffective or unacceptable without a change. In determining whether an adverse comment is significant and warrants withdrawing a direct final rule, we consider whether the comment raises an issue serious enough to warrant a substantive response in a notice-and-comment process in accordance with section 553 of the Administrative Procedure Act (APA) (5 U.S.C. 553). Comments that are frivolous, insubstantial, or outside the scope of the rule would not be considered adverse. A comment recommending a rule change in addition to the rule would not be considered a significant adverse comment, unless the comment states why the rule would be ineffective without the additional change. In addition, if a significant adverse comment applies to part of a rule and that part can be severed from the remainder of the rule, we may adopt as final those parts of the rule that are not the subject of a significant adverse comment.

If we withdraw this direct final rule, FDA will consider all comments that we received regarding the companion proposed rule as we develop a final rule through the usual notice-and-comment procedures of the APA. If we receive no significant adverse comment during the specified comment period regarding this direct final rule, we intend to publish a confirmation notice in the **Federal Register** within 30 days after the comment period ends.

III. Legal Authority

This rule, if finalized, would amend § 56.120(b). FDA's authority to modify § 56.120(b) arises from the same authority under which FDA initially issued this regulation, the IRB regulations, and general administrative provisions of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 343, 346, 346a, 348, 350a, 350b, 351, 352, 353, 355, 360, 360c–360f, 360h, 360i, 360j, 360hh–360ss, 371, 379e, 381; 42 U.S.C. 216, 241, 262).

IV. Analysis of Environmental Impact

We have determined under 21 CFR 25.30(h) and 25.34(a) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

V. Economic Analysis of Impact

We have examined the impacts of the final rule under Executive Order 12866, Executive Order 13563, the Regulatory Flexibility Act (5 U.S.C. 601–612), and the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4). Executive Orders 12866 and 13563 direct us to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity). We believe that this final rule is not a significant regulatory action as defined by Executive Order 12866.

The Regulatory Flexibility Act requires us to analyze regulatory options that would minimize any significant impact of a rule on small entities. Because this rule does not add any additional regulatory burdens, we certify that this final rule will not have a significant economic impact on a substantial number of small entities.

Section 202(a) of the Unfunded Mandates Reform Act of 1995 requires us to prepare a written statement, which includes an assessment of anticipated costs and benefits, before issuing "any rule that includes any Federal mandate that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100,000,000 or more (adjusted annually for inflation) in any one year." The current threshold after adjustment for inflation is $144 million, using the most current (2014) Implicit Price Deflator for the Gross Domestic Product. This final rule would not result in an expenditure in any year that meets or exceeds this amount.

The purpose of this final rule is to affirm FDA's longstanding interpretation of § 56.120(b), that FDA may impose these administrative actions on a noncompliant IRB until the IRB takes appropriate corrective action. The amendment will improve the clarity and accuracy of the regulations. Because this final rule is a clarification and would impose no additional regulatory burdens, this regulation is not anticipated to result in any compliance costs, and the economic impact is expected to be minimal.

VI. Paperwork Reduction Act of 1995

This direct final rule contains no collection of information. Therefore, clearance by the Office of Management and Budget under the Paperwork Reduction Act of 1995 is not required.

VII. Federalism

We have analyzed this final rule in accordance with the principles set forth in Executive Order 13132. FDA has determined that the rule does not contain policies that have substantial direct effects on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. Accordingly, the Agency has concluded that the rule does not contain policies that have federalism implications as defined in the Executive Order and, consequently, a federalism summary impact statement is not required.

List of Subjects in 21 CFR Part 56

Human research subjects, Reporting and recordkeeping requirements, Safety.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, 21 CFR part 56 is amended as follows:

PART 56—INSTITUTIONAL REVIEW BOARDS

■ 1. The authority citation for 21 CFR part 56 is revised to read as follows:

Authority: 21 U.S.C. 321, 343, 346, 346a, 348, 350a, 350b, 351, 352, 353, 355, 360, 360c–360f, 360h, 360i, 360j, 360hh–360ss, 371, 379e, 381; 42 U.S.C. 216, 241, 262.

■ 2. In § 56.120, redesignate paragraphs (b)(4) and (c) as paragraphs (c) and (d), respectively, and revise paragraph (b) and newly designated paragraph (c) to read as follows:

§ 56.120 Lesser administrative actions.

* * * * *

(b) On the basis of the IRB's or the institution's response, FDA may schedule a reinspection to confirm the adequacy of corrective actions. In addition, until the IRB or the parent institution takes appropriate corrective action, the Agency may require the IRB to:

(1) Withhold approval of new studies subject to the requirements of this part that are conducted at the institution or reviewed by the IRB;

(2) Direct that no new subjects be added to ongoing studies subject to this part; or

(3) Terminate ongoing studies subject to this part when doing so would not endanger the subjects.

(c) When the apparent noncompliance creates a significant threat to the rights and welfare of human subjects, FDA may notify relevant State and Federal regulatory agencies and other parties with a direct interest in the Agency's action of the deficiencies in the operation of the IRB.

* * * * *

Dated: March 29, 2016.

Leslie Kux,

Associate Commissioner for Policy.

[FR Doc. 2016–07523 Filed 4–1–16; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 100

[Docket Number USCG–2015–1055]

RIN 1625–AA08

Special Local Regulation; Charleston Race Week, Charleston Harbor, Charleston, SC

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a special local regulation on the waters of Charleston Harbor in Charleston, SC during the Charleston Race Week from April 15, 2016 through April 17, 2016. This special local regulation is necessary to ensure the safety of participants, spectators, and the general public during the event. This regulation prohibits persons and vessels from being in the regulated area unless authorized by the Captain of the Port Charleston or a designated representative.

DATES: This rule is effective from April 15, 2016 through April 17, 2016.

ADDRESSES: To view documents mentioned in this preamble as being available in the docket, go to *http://www.regulations.gov,* type USCG–2015–1055 in the "SEARCH" box and click "SEARCH." Click on Open Docket Folder on the line associated with this rule.

FOR FURTHER INFORMATION CONTACT: If you have questions about this rule, call or email Lieutenant John Downing, Sector Charleston Office of Waterways Management, Coast Guard; telephone(843)740–3184, email *John.Z.Downing@uscg.mil.*

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

CFR	Code of Federal Regulations
DHS	Department of Homeland Security
NPRM	Notice of proposed rulemaking
§	Section
U.S.C.	United States Code

II. Background Information and Regulatory History

On November 18, 2015, the Charleston Ocean Racing Association notified the Coast Guard that it will sponsor a series of sailboat races in the Charleston Harbor, Charleston, SC. from 8:30 a.m. to 5 p.m. April 15, 2016 through April 17, 2016. In response, on February 5, 2016, the Coast Guard published a notice of proposed rulemaking titled Charleston Race Week. There we stated why we issued the NPRM and invited comments on our proposed regulatory action related to this special local regulation. During the comment period that ended March 7, 2016, we received no comments.

Under good cause provisions in 5 U.S.C. 553(d)(3), we are making this rule effective less than 30 days after its publication in the **Federal Register**. The Coast Guard finds that good cause exists for making this rule effective starting April 15, 2016 because this special local regulation is necessary to ensure the safety of life and property during this high speed boat race and it would be contrary to public interest not to make this rule effective by April 15, 2016. Also, this regulation will have a limited impact on the waterway for a limited time and designated representatives will be on scene to assist the public with compliance.

III. Legal Authority and Need for Rule

The legal basis for the rule is the Coast Guard's authority to establish special local regulations: 33 U.S.C. 1233. The purpose of the rule is to insure safety of life on navigable waters of the United States during three Charleston Race Week sailboat races. It was determined that potential hazards are associated with the areas used in the Charleston Race Week sailboat races that can be alleviated by prohibiting access to the regulated areas.

IV. Discussion of Comments, Changes, and the Rule

As noted above, we received no comments on our NPRM published February 5, 2016. There are no changes in the regulatory text of this rule from the proposed rule in the NPRM.

From April 15, 2016 through April 17, 2016, Charleston Ocean Racing Association will host three sailboat races on Charleston Harbor in Charleston, South Carolina during Charleston Race Week. Approximately 300 sailboats will participate in the three races. This rule establishes a special local regulation on certain waters of Charleston Harbor in Charleston, South Carolina. The special local regulation will be enforced daily from 8:30 a.m. until 5 p.m. on April 15, 2016 through April 17, 2016. The special local regulation consists of the following three race areas.

1. *Race Area #1.* All waters encompassed within a 700 yard radius of position 32°46′10″ N. 79°55′15″ W.

2. *Race Area #2.* All waters encompassed within a 700 yard radius of position 32°46′02″ N. 79°54′15″ W.

3. *Race Area #3.* All waters encompassed within a 700 yard radius of position 32°45′55″ N. 79°53′39″ W.

Except for those persons and vessels participating in the sailboat races, persons and vessels are prohibited from entering, transiting through, anchoring in, or remaining within any of the race areas unless specifically authorized by the Captain of the Port Charleston or a designated representative. Persons and vessels desiring to enter, transit through, anchor in, or remain within any of the race areas may contact the Captain of the Port Charleston by telephone at (843) 740–7050, or a designated representative via VHF radio on channel 16, to request authorization. If authorization to enter, transit through, anchor in, or remain within the race areas is granted by the Captain of the Port Charleston or a designated representative, all persons and vessels receiving such authorization must comply with the instructions of the Captain of the Port Charleston or a designated representative. The Coast Guard will provide notice of the regulated areas by Local Notice to Mariners, Broadcast Notice to Mariners, and on-scene designated representatives.

V. Regulatory Analyses

We developed this rule after considering numerous statutes and Executive Orders related to rulemaking. Below we summarize our analyses based on a number of these statutes and Executive Orders, and we discuss First Amendment rights of protestors.

A. Regulatory Planning and Review

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits. Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This rule has not been designated a "significant regulatory action," under Executive Order 12866. Accordingly, it has not been reviewed by the Office of Management and Budget. This rule is not a significant regulatory action under section 3(f) of Executive Order 12866, Regulatory Planning and Review, as supplemented by Executive Order 13563, Improving Regulation and Regulatory Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of Executive Order 12866 or under section 1 of Executive Order 13563. The Office of Management and Budget has not reviewed it under those Orders.

The economic impact of this rule is not significant for the following reasons: (1) Non-participant persons and vessels may enter, transit through, anchor in, or remain within the regulated area during the enforcement periods if authorized by the Captain of the Port Charleston or a designated representative; (2) vessels not able to enter, transit through, anchor in, or remain within the regulated area without authorization from the Captain of the Port Charleston or a designated representative may operate in the surrounding areas during the enforcement period; and (3) the Coast Guard will provide advance notification of the special local regulation to the local maritime community by Local Notice to Mariners and Broadcast Notice to Mariners; (4) the safety zone will impact only 3 small designated areas of Charleston Harbor for less than 9 hours per day for 3 days over the weekend of April 15, to 17, 2016, and thus is limited in time and scope.

B. Impact on Small Entities

The Regulatory Flexibility Act of 1980, 5 U.S.C. 601–612, as amended, requires Federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard received no comments from the Small Business Administration on this rulemaking. The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

This rule may affect the following entities, some of which may be small entities: The owner or operators of vessels intending to enter, transit through, anchor in, or remain within the regulated area during the enforcement period. For the reasons discussed in Regulatory Planning and Review section above, this rule will not have a significant economic impact on a substantial number of small entities.

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104–121), we want to assist small entities in understanding this rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247). The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

C. Collection of Information

This rule will not call for a new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

D. Federalism and Indian Tribal Governments

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this rule under that Order and have determined that it is consistent with the fundamental federalism principles and preemption requirements described in Executive Order 13132.

Also, this rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes. If you believe this rule has implications for federalism or Indian tribes, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section.

E. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 (adjusted for inflation) or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

F. Environment

We have analyzed this rule under Department of Homeland Security Management Directive 023–01 and Commandant Instruction M16475.lD, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969(42 U.S.C. 4321–4370f), and have determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves a special local regulation issued in conjunction with a regatta or marine parade. This rule is categorically excluded from further review under paragraph 34(h) of Figure 2–1 of the Commandant Instruction.

An environmental analysis checklist supporting this determination and a Categorical Exclusion Determination are available in the docket where indicated under **ADDRESSES.** We seek any comments or information that may lead to the discovery of a significant environmental impact from this rule.

G. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places or vessels.

List of Subjects in 33 CFR Part 100

Marine safety, Navigation (water), Reporting and recordkeeping requirements, Waterways.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 100 as follows:

PART 100—SAFETY OF LIFE ON NAVIGABLE WATERS

■ 1. The authority citation for part 100 continues to read as follows:

Authority: 33 U.S.C. 1233

■ 2. Add a temporary § 100.35T07–1055 to read as follows:

§ 100.35T07–1055 Special Local Regulation; Charleston Race Week, Charleston Harbor, Charleston, SC.

(a) *Regulated Area.* A special local regulation is established on waters of Charleston Harbor in Charleston, South Carolina. The special local regulations will be enforced daily from 8:30 a.m. until 5 p.m. from April 15, 2016 through April 17, 2016. The special local regulations consist of the following three race areas.

(1) *Race Area #1.* All waters encompassed within a 700 yard radius of position 32°46′10″ N. 79°55′15″ W.

(2) *Race Area #2.* All waters encompassed within a 700 yard radius of position 32°46′02″ N. 79°54′15″ W.

(3) *Race Area #3.* All waters encompassed within a 700 yard radius of position 32°45′55″ N. 79°53′39″ W.

(b) *Definition.* The term "designated representative" means Coast Guard Patrol Commanders, including Coast Guard coxswains, petty officers, and other officers operating Coast Guard vessels, and Federal, state, and local officers designated by or assisting the Captain of the Port Charleston in the enforcement of the regulated areas.

(c) *Regulations.* (1) All persons and vessels are prohibited from entering, transiting through, anchoring in, or remaining within the regulated area, except persons and vessels participating in Charleston Race Week or serving as safety vessels. Persons and vessels desiring to enter, transit through, anchor in, or remain within the regulated area may contact the Captain of the Port Charleston by telephone at (843) 740–7050, or a designated representative via VHF radio on channel 16, to request authorization. If authorization to enter, transit through, anchor in, or remain within the regulated area is granted by the Captain of the Port Charleston or a designated representative, all persons and vessels receiving such authorization must comply with the instructions of the Captain of the Port Charleston or a designated representative.

(2) The Coast Guard will provide notice of the regulated area by Marine Safety Information Bulletins, Local Notice to Mariners, Broadcast Notice to Mariners, and on-scene designated representatives.

(d) *Enforcement Date.* This rule will be enforced daily from 8:30 a.m. until 5 p.m. from April 15 through April 17, 2016.

Dated: March 29, 2016.

G.L. Tomasulo,

Captain, U.S. Coast Guard, Captain of the Port Charleston.

[FR Doc. 2016–07589 Filed 4–1–16; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 100

[Docket Number USCG–2016–0009]

RIN 1625–AA08

Special Local Regulation; Bucksport/Lake Murray Drag Boat Spring Nationals, Atlantic Intracoastal Waterway; Bucksport, SC

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a special local regulation on the Atlantic Intracoastal Waterway in Bucksport, South Carolina during the Bucksport/Lake Murray Drag Boat Spring Nationals, on June 4 and June 5, 2016. This special local regulation is necessary to ensure the safety of participants, spectators, and the general public during the event. This regulation prohibits persons and vessels from being in the regulated area unless authorized by the Captain of the Port Charleston or a designated representative.

DATES: This rule is effective from June 4, 2016 through June 5, 2016.

ADDRESSES: To view documents mentioned in this preamble as being available in the docket, go to *http://www.regulations.gov,* type USCG–2016–0009 in the "SEARCH" box and click "SEARCH." Click on Open Docket Folder on the line associated with this rule.

FOR FURTHER INFORMATION CONTACT: If you have questions about this rule, call or email Lieutenant John Downing, Sector Charleston Office of Waterways Management, Coast Guard; telephone (843) 740–3184, email *John.Z.Downing@uscg.mil.*

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

CFR	Code of Federal Regulations
DHS	Department of Homeland Security
NPRM	Notice of proposed rulemaking
§	Section
U.S.C.	United States Code

II. Background Information and Regulatory History

On December 27, 2015, the Bucksport Marina notified the Coast Guard that it will sponsor a series of drag boat races from 1 p.m. to 7 p.m. on June 4 and June 5, 2016. In response, on February 5, 2016, the Coast Guard published a notice of proposed rulemaking titled Bucksport/Lake Murray Drag Boat Spring Nationals, Atlantic Intracoastal Waterway; Bucksport, SC. There we stated why we issued the NPRM, and invited comments on our proposed regulatory action related to this special local regulation. During the comment period that ended March 7, 2016, we received no comments.

III. Legal Authority and Need for Rule

The legal basis for the rule is the Coast Guard's authority to establish special local regulations: 33 U.S.C. 1233. The purpose of the rule is to insure safety of life on navigable waters of the United States during the two days of drag boat races.

IV. Discussion of Comments, Changes, and the Rule

As noted above, we received no comments on our NPRM published February 5, 2016. There are no changes in the regulatory text of this rule from the proposed rule in the NPRM. From June 4, 2016 through June 5, 2016, Bucksport Marina will host a series of drag boat races on the Atlantic Intracoastal Waterway in Bucksport, South Carolina during the Bucksport/Lake Murray Drag Boat Spring Nationals. Approximately 50 powerboats are anticipated to participate in the races and approximately 35 spectator vessels are expected to attend the event. This rule establishes a special local regulation on certain waters on the Atlantic

Intracoastal Waterway in Bucksport, South Carolina. The special local regulation will be enforced daily from 1 p.m. until 7 p.m. on June 4, 2016 and June 5, 2016.

Except for those persons and vessels participating in the drag boat races, persons and vessels are prohibited from entering, transiting through, anchoring in, or remaining within any of the race areas unless specifically authorized by the Captain of the Port Charleston or a designated representative. Persons and vessels desiring to enter, transit through, anchor in, or remain within any of the race areas may contact the Captain of the Port Charleston by telephone at (843)740–7050, or a designated representative via VHF radio on channel 16, to request authorization. If authorization to enter, transit through, anchor in, or remain within the race areas is granted by the Captain of the Port Charleston or a designated representative, all persons and vessels receiving such authorization must comply with the instructions of the Captain of the Port Charleston or a designated representative. The Coast Guard will provide notice of the regulated areas by Local Notice to Mariners, Broadcast Notice to Mariners, and on-scene designated representatives.

V. Regulatory Analyses

We developed this rule after considering numerous statutes and Executive Orders related to rulemaking. Below we summarize our analyses based on a number of these statutes and Executive Orders, and we discuss First Amendment rights of protestors.

A. Regulatory Planning and Review

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits. Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This rule has not been designated a "significant regulatory action," under Executive Order 12866. Accordingly, it has not been reviewed by the Office of Management and Budget. This rule is not a significant regulatory action under section 3(f) of Executive Order 12866, Regulatory Planning and Review, as supplemented by Executive Order 13563, Improving Regulation and Regulatory Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of Executive Order 12866 or under section 1 of Executive Order 13563. The Office of Management and Budget has not reviewed it under those Orders.

The economic impact of this rule is not significant for the following reasons: (1) Non-participant persons and vessels may enter, transit through, anchor in, or remain within the regulated area during the enforcement periods if authorized by the Captain of the Port Charleston or a designated representative; (2) vessels not able to enter, transit through, anchor in, or remain within the regulated area without authorization from the Captain of the Port Charleston or a designated representative may operate in the surrounding areas during the enforcement period; and (3) the Coast Guard will provide advance notification of the special local regulation to the local maritime community by Local Notice to Mariners and Broadcast Notice to Mariners. (4) the safety zone will impact only a small designated area of the Atlantic Intracoastal Waterway for the 2 days of June 4, and 5, from 1p.m. to 7 p.m., and thus is limited in time and scope.

B. Impact on Small Entities

The Regulatory Flexibility Act of 1980, 5 U.S.C. 601–612, as amended, requires Federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard received no comments from the Small Business Administration on this rulemaking. The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

This rule may affect the following entities, some of which may be small entities: The owner or operators of vessels intending to enter, transit through, anchor in, or remain within the regulated area during the enforcement period. For the reasons discussed in Regulatory Planning and Review section above, this rule will not have a significant economic impact on a substantial number of small entities.

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104–121), we want to assist small entities in understanding this rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247). The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

C. Collection of Information

This rule will not call for a new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

D. Federalism and Indian Tribal Governments

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this rule under that Order and have determined that it is consistent with the fundamental federalism principles and preemption requirements described in Executive Order 13132.

Also, this rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes. If you believe this rule has implications for federalism or Indian tribes, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section.

E. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 (adjusted for inflation) or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

F. Environment

We have analyzed this rule under Department of Homeland Security Management Directive 023–01 and Commandant Instruction M16475.lD, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4370f), and have determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves a special local regulation issued in conjunction with a regatta or marine parade. This rule is categorically excluded from further review under paragraph 34(h) of Figure 2–1 of the Commandant Instruction.

An environmental analysis checklist supporting this determination and a Categorical Exclusion Determination are available in the docket where indicated under **ADDRESSES**. We seek any comments or information that may lead to the discovery of a significant environmental impact from this rule.

G. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places or vessels.

List of Subjects in 33 CFR Part 100

Marine safety, Navigation (water), Reporting and recordkeeping requirements, Waterways.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 100 as follows:

PART 100—SAFETY OF LIFE ON NAVIGABLE WATERS

■ 1. The authority citation for part 100 continues to read as follows:

Authority: 33 U.S.C. 1233.

■ 2. Add a temporary § 100.35T07–0009 to read as follows:

§ 100.35T07–0009 Bucksport/Lake Murray Drag Boat Spring Nationals, Atlantic Intracoastal Waterway; Bucksport, SC.

(a) *Regulated Area.* All waters of the Atlantic Intracoastal Waterway encompassed by a line connecting the following points: Point 1 in position 33°39′13″ N., 079°05′36″ W.; thence west to point 2 in position 33°39′17″ N., 079°05′46′ W.; thence south to point 3 in position 33°38′53″ N., 079°05′39″ W.; thence east to point 4 in position 33°38′54″ N., 079°05′31″ W.; thence north back to point 1. All coordinates are North American Datum 1983.

(b) *Definition.* As used in this section, "designated representative" means Coast Guard Patrol Commanders, including Coast Guard coxswains, petty officers, and other officers operating Coast Guard vessels, and Federal, state, and local officers designated by or assisting the Captain of the Port Charleston in the enforcement of the regulated areas.

(c) *Regulations.* (1) All persons and vessels are prohibited from entering, transiting through, anchoring in, or remaining within the regulated area, except persons and vessels participating in Bucksport/Lake Murray Drag Boat Spring Nationals or serving as safety vessels. Persons and vessels desiring to enter, transit through, anchor in, or remain within the regulated area may contact the Captain of the Port Charleston by telephone at (843)740–7050, or a designated representative via VHF radio on channel 16, to request authorization. If authorization to enter, transit through, anchor in, or remain within the regulated area is granted by the Captain of the Port Charleston or a designated representative, all persons and vessels receiving such authorization must comply with the instructions of the Captain of the Port Charleston or a designated representative.

(2) The Coast Guard will provide notice of the regulated area by Marine Safety Information Bulletins, Local Notice to Mariners, Broadcast Notice to Mariners, and on-scene designated representatives.

(d) *Enforcement Date.* This rule will be enforced daily on June 4 and June 5, 2016, from 1 p.m. until 7 p.m.

Dated: March 29, 2016.

G.L. Tomasulo,

Captain, U.S. Coast Guard, Captain of the Port Charleston.

[FR Doc. 2016–07588 Filed 4–1–16; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[Docket No. USCG–2016–0239]

Drawbridge Operation Regulation; Three Mile Slough, Rio Vista, CA

AGENCY: Coast Guard, DHS.

ACTION: Notice of deviation from drawbridge regulation.

SUMMARY: The Coast Guard has issued a temporary deviation from the operating schedule that governs the Highway 160 drawbridge across Three Mile Slough, mile 0.1, at Rio Vista, CA. The deviation is necessary to allow the bridge owner to complete the necessary sand blasting and painting rehabilitation. This deviation allows the bridge to be secured in the closed-to-navigation position during the deviation period.

DATES: This deviation is effective from 12:01 a.m. on April 11, 2016 to 11:59 p.m. on April 17, 2016.

ADDRESSES: The docket for this deviation, [USCG–2016–0239], is available at *http://www.regulations.gov.* Type the docket number in the "SEARCH" box and click "SEARCH." Click on Open Docket Folder on the line associated with this deviation.

FOR FURTHER INFORMATION CONTACT: If you have questions on this temporary deviation, call or email David H. Sulouff, Chief, Bridge Section, Eleventh Coast Guard District; telephone 510–437–3516, email *David.H.Sulouff@uscg.mil.*

SUPPLEMENTARY INFORMATION: The California Department of Transportation has requested a temporary change to the operation of the Highway 160 drawbridge, mile 0.1, over Three Mile Slough, at Rio Vista, CA. The drawbridge navigation span provides 12 feet vertical clearance above Mean High Water in the closed-to-navigation position. In accordance with 33 CFR 117.5, the draw opens on signal. Navigation on the waterway is commercial, search and rescue, law enforcement, and recreational.

The drawbridge will be secured in the closed-to-navigation position from 12:01 a.m. on April 11, 2016 to 11:59 p.m. on April 17, 2016, to allow the bridge owner to complete the necessary sand blasting and painting rehabilitation after unforeseen events have caused project delays. A containment scaffolding system has been installed below low steel of the entire length of the bridge structure, reducing vertical clearance for navigation by not more than 4 feet, and is lighted at night with red lights. This temporary deviation has been coordinated with the waterway users. No objections to the proposed temporary deviation were raised.

Vessels able to pass through the bridge in the closed position may do so at any time. The bridge will not be able to open for emergencies. The confluence of the San Joaquin and Sacramento rivers can be used as an alternate route for vessels unable to pass through the bridge in the closed position. The Coast Guard will also inform waterway users through our Local and Broadcast Notices to Mariners of the change in operating schedule for the bridge so that vessel operators can arrange their transits to minimize any impact caused by the temporary deviation.

In accordance with 33 CFR 117.35(e), the drawbridge must return to its regular operating schedule immediately at the end of the effective period of this temporary deviation. This deviation from the operating regulations is authorized under 33 CFR 117.35.

Dated: March 23, 2016.

D.H. Sulouff,

District Bridge Chief, Eleventh Coast Guard District.

[FR Doc. 2016–07660 Filed 4–1–16; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[Docket No. USCG–2016–0225]

Drawbridge Operation Regulation; Sacramento River, Sacramento, CA

AGENCY: Coast Guard, DHS.

ACTION: Notice of deviation from drawbridge regulation.

SUMMARY: The Coast Guard has issued a temporary deviation from the operating schedule that governs the Tower Drawbridge across the Sacramento River, mile 59.0, at Sacramento, CA. The deviation is necessary to allow the community to participate in the Pony Express Marathon. This deviation allows the bridge to remain in the closed-to-navigation position during the deviation period.

DATES: This deviation is effective from 6:30 a.m. to 11 a.m. on May 1, 2016.

ADDRESSES: The docket for this deviation, [USCG–2016–0225] is available at *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: If you have questions on this temporary deviation, call or email David H. Sulouff, Chief, Bridge Section, Eleventh Coast Guard District; telephone 510–437–3516, email *David.H.Sulouff@uscg.mil.*

SUPPLEMENTARY INFORMATION: California Department of Transportation has requested a temporary change to the operation of the Tower Drawbridge, mile 59.0, over Sacramento River, at Sacramento, CA. The vertical lift bridge navigation span provides a vertical clearance of 30 feet above Mean High Water in the closed-to-navigation position. The draw operates as required by 33 CFR 117.189(a). Navigation on the waterway is commercial and recreational.

The drawspan will be secured in the closed-to-navigation position from 6:30 a.m. to 11 a.m. on May 1, 2016, to allow the community to participate in the Pony Express Marathon. This temporary deviation has been coordinated with the waterway users. No objections to the proposed temporary deviation were raised.

Vessels able to pass through the bridge in the closed position may do so at anytime. The bridge will be able to open for emergencies and there is no immediate alternate route for vessels to pass. The Coast Guard will also inform the users of the waterways through our Local and Broadcast Notices to Mariners of the change in operating schedule for the bridge so that vessels can arrange their transits to minimize any impact caused by the temporary deviation.

In accordance with 33 CFR 117.35(e), the drawbridge must return to its regular operating schedule immediately at the end of the effective period of this temporary deviation. This deviation from the operating regulations is authorized under 33 CFR 117.35.

Dated: March 23, 2016.

D.H. Sulouff,

District Bridge Chief, Eleventh Coast Guard District.

[FR Doc. 2016–07656 Filed 4–1–16; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG–2016–0226]

RIN 1625–AA00

Safety Zone; Hudson River, Tarrytown, NY

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary moving safety zone for navigable waters of the Hudson River, in the vicinity of the Tappan Zee Bridge around a 100-yard radius of DECK BARGE WITTE 1406. The safety zone is needed to protect personnel, vessels, and the marine environment from potential hazards created by salvage operations on the sunken vessel TUG SPECIALIST. Entry of vessels or persons into this zone is prohibited unless specifically authorized by the Captain of the Port New York.

DATES: This rule is effective without actual notice from April 4, 2016 through May 17, 2016. For the purposes of enforcement, actual notice will be used from March 17, 2016 through April 4, 2016.

ADDRESSES: To view documents mentioned in this preamble as being available in the docket, go to *http://www.regulations.gov,* type USCG–2016–0226 in the "SEARCH" box and click "SEARCH." Click on Open Docket Folder on the line associated with this rule.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or email MST1 Kristina Pundt, Waterways Management Division, U.S. Coast Guard; telephone 718–354–4352, email *Kristina.H.Pundt@uscg.mil.*

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

CFR Code of Federal Regulations
DHS Department of Homeland Security
FR Federal Register
NPRM Notice of proposed rulemaking
§ Section
U.S.C. United States Code

II. Background Information and Regulatory History

The Coast Guard is issuing this temporary rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are "impracticable, unnecessary, or contrary to the public interest." Under 5 U.S.C. 553(b) (B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because immediate action is needed to respond to the potential safety hazards associated with the salvage operations of TUG SPECIALIST that sank in the Hudson River on March 12, 2016. Delaying the effective date of this rule would be contrary to the public interest of ensuring the safety of salvage workers, DECK BARGE WITTE 1406, other vessels, and mariners from the hazards associated with the salvage of TUG SPECIALIST.

We are issuing this rule, and under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making it effective less than 30 days after publication in the **Federal Register** for the same reasons as discussed above.

III. Legal Authority and Need for Rule

The Coast Guard is issuing this rule under authority in 33 U.S.C. 1231. The Captain of the Port New York (COTP) has determined that potential hazards associated with emergency salvage operations starting March 17, 2016, will be a safety concern for anyone within a 100-yard radius of DECK BARGE WITTE 1406. This rule is needed to protect personnel, vessels, and the marine environment in the navigable waters within the safety zone while DECK BARGE WITTE 1406 conducts salvage operations on the sunken vessel.

IV. Discussion of the Rule

This rule establishes a safety zone from March 17, 2016 through May 17, 2016. The safety zone will cover all navigable waters within 100 yards of DECK BARGE WITTE 1406 to salvage the sunken tug vessel. The duration of the zone is intended to protect personnel, vessels, and the marine environment in these navigable waters while salvage operations are conducted. No vessel or person will be permitted to enter the safety zone without obtaining permission from the COTP or a designated representative.

V. Regulatory Analyses

We developed this rule after considering numerous statutes and Executive order related to rulemaking. Below we summarize our analyses based on a number of these statutes and Executive orders, and we discuss First Amendment rights of protestors.

A. Regulatory Planning and Review

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits. Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This rule has not been designated a "significant regulatory action," under Executive Order 12866. Accordingly, it has not been reviewed by the Office of Management and Budget.

This regulatory action determination is based on the size, location, duration, and time-of-year of the safety zone. Vessel traffic will be able to safely transit around this safety zone which will impact a small designated area of the Hudson River in the vicinity of the Tappan Zee Bridge for 60 days and during a time of year when vessel traffic is normally low. Moreover, the Coast Guard will issue Broadcast Notice to Mariners via VHF–FM marine channel 16 about the zone and the rule allows vessels to seek permission to enter the zone.

B. Impact on Small Entities

The Regulatory Flexibility Act of 1980, 5 U.S.C. 601–612, as amended, requires Federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

While some owners or operators of vessels intending to transit the safety zone may be small entities, for the reasons stated in section V.A above, this rule will not have a significant economic impact on any vessel owner or operator.

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247). The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

C. Collection of Information

This rule will not call for a new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

D. Federalism and Indian Tribal Governments

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this rule under that Order and have determined that it is consistent with the fundamental federalism principles and preemption requirements described in Executive Order 13132.

Also, this rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes. If you believe this rule has implications for federalism or Indian tribes, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section above.

E. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 (adjusted for inflation) or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

F. Environment

We have analyzed this rule under Department of Homeland Security Management Directive 023–01 and Commandant Instruction M16475.lD, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4370f), and have determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves: A safety zone lasting approximately 62 that will prohibit entry within 100 yards of DECK BARGE WITTE 1406 being used by personnel to salvage the sunken tug vessel. It is categorically excluded from further review under paragraph 34(g) of Figure 2–1 of the Commandant

Instruction. An environmental analysis checklist supporting this determination and a Categorical Exclusion Determination will be available in the docket where indicated under **ADDRESSES**. We seek any comments or information that may lead to the discovery of a significant environmental impact from this rule.

G. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places or vessels.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

■ 1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191; 33 CFR 1.05–1, 6.04–1, 6.04–6, and 160.5; Department of Homeland Security Delegation No. 0170.1.

■ 2. Add § 165.T01–0226 to read as follows:

§ 165.T01–0226 Safety Zone; Salvage of TUG SPECIALIST, Hudson River, Tarrytown, NY.

(a) *Location.* The following area is a safety zone: All navigable waters within 100 yards of DECK BARGE WITTE 1406 while it is in the Hudson River.

(b) *Definitions.* As used in this section, *designated representative* means a Coast Guard Patrol Commander, including a Coast Guard coxswain, petty officer, or other officer operating a Coast Guard vessel and a Federal, State, and local officer designated by or assisting the Captain of the Port New York (COTP) in the enforcement of the security zone.

(c) *Regulations.* (1) Under the general security zone regulations in subpart D of this part, you may not enter the safety zone described in paragraph (a) of this section unless authorized by the COTP or the COTP's designated representative.

(2) To seek permission to enter, contact the COTP or the COTP's representative via VHF channel 16 or by phone at (718) 354–4353 (Sector New York Command Center). Those in the safety zone must comply with all lawful orders or directions given to them by the COTP or the COTP's designated representative.

(d) *Enforcement period.* This section will be enforced from March 17, 2016 through May 17, 2016, unless terminated sooner by the COTP.

Dated: March 17, 2016.

M.H. Day,

Captain, U.S. Coast Guard, Captain of the Port New York.

[FR Doc. 2016–07657 Filed 4–1–16; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

45 CFR Part 75

RIN 0991–ZA46

Federal Awarding Agency Regulatory Implementation of Office of Management and Budget's Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards; Correction and Technical Amendments

AGENCY: Department of Health and Human Services.

ACTION: Interim final rule; correction and technical amendments.

SUMMARY: The Department of Health and Human Services published a document containing technical amendments in the **Federal Register** on January 20, 2016, revising the Uniform Administrative Requirements, Cost Principles and Audit Requirements for HHS Awards. That document inadvertently failed to update the following: A provision in Appendix II; an improper citation; a recent OMB change; and a grammatical error. This document makes correcting amendments to correct these sections.

DATES: Effective on April 4, 2016.

FOR FURTHER INFORMATION CONTACT: Audrey E. Clarke, Ph.D., Division of Grants, Office of Grants and Acquisition Policy and Accountability, Office of the Assistant Secretary for Financial Resources, U.S. Department of Health and Human Services, email: *Audrey.Clarke@hhs.gov.*

SUPPLEMENTARY INFORMATION: HHS is correcting its regulations in line with FR Doc. 2014–28697, published on December 19, 2014 (79 FR 75871), entitled "Federal Awarding Agency Regulatory Implementation of Office of Management and Budget's Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards", the "Guidance for Reporting and Use of Information Concerning Recipient Integrity and Performance" to 2 CFR part 200, published on July 22, 2015 (80 FR 43301), and "Universal Identifier and System of Award Management; Corrections", published on September 10, 2015 (80 FR 54407), made by the Office of Management and Budget (OMB). HHS adopts the correcting amendments made by OMB. HHS is also making amendments to address citation or grammatical inconsistencies, to amend incomplete statements in the regulation, and to update existing HHS regulations to incorporate 45 CFR part 75. The correcting amendments will go into effect at the time of publication.

This is the second set of corrections. The first set of corrections was published in the **Federal Register** on January 20, 2016 (81 FR 3004). This document augments the corrections which were published in the **Federal Register** on January 20, 2016 (81 FR 3004). This document includes a corresponding change made by OMB to 2 CFR 200 on November 9, 2015 (80 FR 69111) that was omitted from the first set of corrections. This document also removes instruction 197c on page 3018 in the **Federal Register** on January 20, 2016 (81 FR 3004), which as published attempted to amend the wrong appendix in 45 CFR part 75. Because that instruction cited the wrong appendix, that amendment could not be incorporated into the CFR.

Correction

In the **Federal Register** issue of January 20, 2016 (81 FR 3004), make the following correction:

On page 3018, in the third column, remove amendatory instruction 197c.

List of Subjects in 45 CFR Part 75

Accounting, Auditing, Administrative practice and procedure, Colleges and universities, Cost principles, Grant programs, Grant programs-health, Grants administration, Hospitals, Indians, Nonprofit organizations, Reporting and recordkeeping requirements, and State and local governments.

Accordingly, HHS makes the following technical amendments to 45 CFR part 75:

PART 75—UNIFORM ADMINISTRATIVE REQUIREMENTS, COST PRINCIPLES, AND AUDIT REQUIREMENTS FOR HHS AWARDS

■ 1. The authority citation for part 75 continues to read as follows:

Authority: 5 U.S.C. 301.

§ 75.2 [Amended]

■ 2. In § 75.2:

■ a. In the definition of "Federal Audit Clearinghouse (FAC)", remove "(FAC)" in the second and third sentences and add "FAC" in its place; and

■ b. In the introductory text of the definition of "Federal financial assistance", add the word "means" before the colon.

§ 75.205 [Amended]

■ 3. Amend § 75.205 paragraph (a)(2) by removing "publicly available information in" and adding, in its place "non-public segment of".

Appendix II to Part 75—[Amended]

■ 4. Amend Appendix II to Part 75 Section C by adding " "Equal Employment Opportunity (30 FR 12319, 12935, 3 CFR 1964–1965 Comp., p. 339)" after "Executive Order 11246,"; and adding "amending Executive Order 11246 Relating to Equal Employment Opportunity," after "Executive Order 11375":

Dated: March 24, 2016.

Ellen Murray,

Assistant Secretary for Financial Resources, Department of Health and Human Services.

[FR Doc. 2016–07401 Filed 4–1–16; 8:45 am]

BILLING CODE 4150–24–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No.: 150304214–6231–02]

RIN 0648–BE94

Fisheries of the Northeastern United States; Atlantic Herring Fishery; Framework Adjustment 4

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Final rule.

SUMMARY: NMFS implements approved measures in Framework 4 to the Atlantic Herring Fishery Management Plan. The New England Fishery Management Council developed Framework 4 to further enhance catch monitoring and address discarding in the herring fishery. The approved measures include: A requirement that vessels report slippage (*i.e.*, catch discarded prior to sampling by an observer) via the vessel monitoring system; slippage consequences measures (*i.e.*, requirement to move 15 nautical miles (27.78 km) or return to port following a slippage event); and clarifications to existing slippage measures and definitions. NMFS disapproved two measures in Framework 4. These measures would have required: Fish holds to be certified and observers to collect volumetric catch estimates of total catch; and fish holds to be empty of fish before leaving port, unless a waiver is issued by an authorized law enforcement officer. NMFS disapproved these measures because it determined that they are inconsistent with the Magnuson-Stevens Fishery Conservation and Management Act, the Administrative Procedure Act, and the Paperwork Reduction Act. Therefore, those two measures are not implemented in this action. Lastly, NMFS implements minor corrections to regulations to clarify their intent and ensure they are consistent with the Atlantic Herring Fishery Management Plan.

DATES: Effective May 4, 2016.

ADDRESSES: The New England Fishery Management Council (Council) developed an environmental assessment (EA) for this action that describes the proposed action and other considered alternatives and provides a thorough analysis of the impacts of the proposed measures and alternatives. Copies of the framework, the EA, and the Regulatory Impact Review (RIR)/Initial Regulatory Flexibility Analysis (IRFA), are available upon request from Thomas A. Nies, Executive Director, New England Fishery Management Council, 50 Water Street, Newburyport, MA 01950. The EA/RIR/IRFA is accessible via the Internet at *www.greateratlantic.fisheries.noaa.gov.*

Written comments regarding the burden-hour estimates or other aspects of the collection-of-information requirements contained in this final rule may be submitted to NMFS, Greater Atlantic Regional Fisheries Office and by email to *OIRA_Submission@omb.eop.gov,* or fax to (202) 395–7285.

FOR FURTHER INFORMATION CONTACT: Carrie Nordeen, Fishery Policy Analyst, phone 978–281–9272, fax 978–281–9135.

SUPPLEMENTARY INFORMATION:

Background

The Council adopted Framework Adjustment 4 to the Atlantic Herring Fishery Management Plan at its April 22, 2014, meeting. The Council submitted Framework 4 to NMFS for review on July 18, 2014, and resubmitted it to NMFS on February 27, 2015, and April 30, 2015. The proposed rule for Framework 4 published in the **Federal Register** on August 27, 2015 (80 FR 52005), with a 30-day public comment period that ended September 28, 2015. NMFS received four comment letters on the proposed rule.

NMFS implements approved measures in Framework 4 to the Atlantic Herring Fishery Management Plan (Herring FMP) and minor corrections to existing regulations in this final rule. The Council developed Framework 4 to build on catch monitoring improvements implemented in Amendment 5 to the Herring FMP (79 FR 8786, February 13, 2014) by further enhancing catch monitoring and addressing discarding in the herring fishery. The approved measures in Framework 4 clarify the slippage definition, require limited access herring vessels to report slippage events on the daily vessel monitoring system (VMS) catch report, and establish slippage consequences. Slippage consequence measures require vessels with All Areas (Category A) or Areas 2/3 (Category B) Limited Access Herring Permits to move 15 nautical miles (27.78 km) following an allowable slippage event (*i.e.*, slippage due to safety, mechanical failure, or excess catch of spiny dogfish) and to terminate a fishing trip and return to port following a non-allowable slippage event (*i.e.*, slippage for any other reason). NMFS also makes minor corrections to new and existing regulations. These revisions, identified and described below, are necessary to clarify current regulations or the intent of the Herring FMP, and do not change the intent of any regulations.

NMFS disapproved two measures recommended by the Council in Framework 4. Those measures would have required: Herring vessel fish holds to be certified and observers to collect volumetric catch estimates on herring trips as a cross-check of vessel and dealer data; and herring vessel fish holds to be empty of fish before leaving port, unless a waiver is issued by an authorized law enforcement officer. During the development of Framework 4, NMFS expressed its concern with the lack of support for these two measures in Framework 4. Specifically, NMFS commented that these measures are not likely to improve catch monitoring, but they would result in compliance and enforcement costs. Despite NMFS urging, the Council did not include sufficient support for these two measures in Framework 4. Framework 4 does not provide evidence of specific problems with catch monitoring or discarding that need to be addressed, nor does it demonstrate how these recommended measures would rectify problems with monitoring or discarding. NMFS described its concern with these measures in the proposed rule, and explained that that they appear inconsistent with the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) and other applicable law. Some public comments on the proposed rule expressed support for the approval and implementation of both measures, but the commenters did not provide evidence that the utility of these measures would outweigh costs. Therefore, NMFS determined that these two measures must be disapproved because they are inconsistent with the Magnuson-Stevens Act, the Administrative Procedure Act (APA), and the Paperwork Reduction Act (PRA).

Approved Measures

NMFS approves the following measures because it believes they will further enhance catch monitoring and address discarding in the herring fishery.

Clarification of Existing Slippage Measures

Framework 4 maintains the existing requirements that prohibit operational discards (*i.e.*, small amounts of fish that cannot be pumped on board and remain in the codend or seine at the end of pumping operations) aboard midwater trawl vessels fishing in the Groundfish Closed Areas and allow operational discards to occur on board herring vessels fishing outside the Groundfish Closed Areas. Current observer protocols include documenting operational discards and existing regulations require vessel operators to assist the observer with this process. Because it can be time and labor intensive to bring these small amounts of fish on board the vessel, the Council and NMFS believe that compliance costs associated with prohibiting operational discards outside the Groundfish Closed Areas would likely outweigh any benefits to the catch monitoring program and the herring resource.

Framework 4 clarifies that a slippage event due to safety, mechanical failure, or excess catch of spiny dogfish is categorized as an "allowable" slippage event and clarifies that slippage for any other reason is categorized as a "non-allowable" slippage event. The Council recommended these categories to help distinguish between slippage types and the triggers for slippage consequence measures.

Framework 4 clarifies that catch not brought on board due to gear damage would be categorized as mechanical failure and, therefore, as an allowable slippage event. Although a gear failure that results in the release of catch from a codend is often beyond the control of the vessel operator, instances of catch released due to gear damage are similar to instances of catch released due to mechanical failure. Therefore, the Council and NMFS believe that catch released due to gear damage should be categorized as mechanical failure and an allowable slippage event. As an allowable slippage event, catch not brought on board due to gear damage would be subject to a slippage consequence measure.

Framework 4 clarifies that when catch that falls out of or off of gear and is not brought on board, the event would not be categorized as a slippage event. In general, only small amounts of catch fall out or off of gear during fishing and/or when catch is being brought aboard the vessel, unlike the potential for catch loss due to mechanical failure. Therefore, the Council and NMFS believe that fish that fall out of the gear should be categorized as discarded catch, but not slippage. For these reasons, instances of catch falling out or off of gear during fishing and/or when catch is being brought aboard the vessel would not be subject to existing slippage requirements or any slippage consequence measures.

Slippage Consequences

Building on the slippage restrictions established in Amendment 5, Framework 4 requires vessels to move following an allowable slippage event before resuming fishing. Specifically, vessels with Category A or B herring permits slipping catch due to safety, mechanical failure, or excess catch of spiny dogfish, are required to move at least 15 nautical miles (27.78 km) away from the slippage event location. The vessel is allowed to move 15 nautical miles (27.78 km) away in any direction, but it is prohibited from resuming fishing until it is at least 15 nautical miles (27.78 km) from the location of the allowable slippage event. Additionally, the vessel is required to remain at least 15 nautical miles (27.78 km) from the slippage event location for the duration of that fishing trip. In addition to moving and remaining at least 15 nautical miles (27.78 km) away from an allowable slippage event, vessels with Category A or B herring permits fishing with midwater trawl gear in the Groundfish Closed Areas must leave the Groundfish Closed Areas and remain outside of the Groundfish Closed Areas for the remainder of the fishing trip following an allowable slippage event.

Framework 4 also requires trip termination for non-allowable slippage events. Specifically, vessels with Category A or B herring permits, including those fishing with midwater trawl gear in the Groundfish Closed Areas, that slip catch for any reason other than safety, mechanical failure, or excess catch of spiny dogfish, are required to immediately stop fishing and return to port. After having returned to port and terminated the fishing trip, vessels are allowed to initiate another fishing trip, consistent with the existing pre-trip notification requirements (*e.g.*, contact the Northeast Fisheries Observer Program (NEFOP) to request an observer, vessel monitoring system (VMS) trip/gear declaration) for limited access vessels participating in the herring fishery.

NMFS is implementing slippage consequences for both allowable and non-allowable slippage events to further discourage slippage in the herring fishery and enhance the catch monitoring program established through Amendment 5. The herring fishery is a relatively high-volume fishery capable of catching large quantities of fish in a single tow. Therefore, even a few slippage events have the potential to substantially affect species composition data, especially extrapolations of incidental catch. Additionally, slippage is a significant concern for many stakeholders because they believe it undermines the ability to collect unbiased estimates of herring catch, as well as other species, in the herring fishery. Stakeholders expressed support for the slippage consequence measures in Framework 4 to further ensure accountability for all catch in the herring fishery.

NMFS expects the requirement for vessels to move following slippage events will provide sufficient incentive for herring vessels to minimize slippage, while still promoting safety at sea and providing opportunities to utilize the herring optimum yield (OY). The requirement for vessels to move 15 nautical miles (27.78 km) following an allowable slippage event applies uniformly to all vessels that slip catch, unlike other considered alternatives (*e.g.*, leaving a management area, leaving a statistical area) where the magnitude of the move would have depended upon the location of the allowable slippage event. NMFS expects that the requirement for vessels to move 15 nautical miles (27.78 km) following an allowable slippage event provides sufficient incentive (*i.e.*, cost in time and fuel) for herring vessels to minimize slippage, and the requirement that vessels terminate their fishing trip and return to port following a non-allowable slippage event will further minimize slippage. NMFS believes that minimizing slippage events and better documentation of slipped catch may improve estimates of bycatch in the fishery. To the extent that the amount and species composition of slipped catch can be sampled and/or estimated, catch monitoring will be enhanced. To the extent that slippage events can continue to be reduced, bycatch can be further minimized.

The Mid-Atlantic Fishery Management Council recommended these same slippage consequences for allowable and non-allowable slippage events in the Atlantic mackerel fishery as part of Framework 9 to the Atlantic Mackerel, Squid, and Butterfish FMP. Many vessels participate in both the herring and mackerel fisheries, and NMFS expects that implementing consistent slippage consequences across these fisheries will improve compliance and enforcement of slippage requirements.

Reporting Slippage Events

Framework 4 requires vessels with limited access herring permits to report slippage events, including the reason for the slippage event, via the herring daily VMS catch report. NMFS expects that this VMS report, in combination with observer data, will help enhance the enforceability of existing slippage requirements, such as completing a released catch affidavit, as well as the slippage consequences.

Clarifications and Corrections

This final rule also contains minor clarifications and corrections to existing regulations. NMFS implements these adjustments under the authority of section 305(d) to the Magnuson-Stevens Act, which provides that the Secretary of Commerce may promulgate regulations necessary to ensure that framework adjustments to a FMPs are carried out in accordance with the FMP and the Magnuson-Stevens Act. These adjustments, identified and described below, are necessary to clarify current regulations and do not change the intent of any regulations.

NMFS is implementing a transiting provision for herring management areas with seasonal sub-ACLs. This provision allows vessels to transit herring management areas during periods when zero percent of the sub-ACL for those areas is available for harvest, with herring harvested from other herring management areas aboard, provided gear is stowed and not available for use. NMFS overlooked this provision during rulemaking for Framework Adjustment 2 to the Herring FMP and the provision is consistent with the intent of that action and the Herring FMP. NMFS is removing regulations at § 648.80(d)(7) describing requirements for midwater trawl vessels fishing in Groundfish Closed Area I because they are redundant with regulations at § 648.202(b) describing requirements for midwater trawl vessels fishing in any of the Groundfish Closed Areas. NMFS is adding the definition of operational discards at § 648.2 and clarifying that operational discards are not permitted aboard midwater trawl vessels fishing in Groundfish Closed Areas, unless those fish have first been made available to an observer for sampling. NMFS is revising references to individual years in regulations for carryover at § 648.201 to more correctly describe the timing of carryover. Lastly, NMFS is correcting coordinates for Herring Management Area 2 at § 648.200(f)(2).

Disapproved Measures

NMFS disapproved the following measures because it determined they are inconsistent with the Magnuson-Stevens Act, APA, and PRA.

Volumetric Catch Estimates

Framework 4 would have required vessels with limited access herring permits to have their fish holds certified and NEFOP observers to collect volumetric estimates of total catch by measuring the volume of the fish in hold prior to offloading. Observers would have converted the volumetric estimate to a weight and submitted the estimated weight to the Greater Atlantic Region Fisheries Office (GARFO) for a cross-check of vessel trip reports (VTRs) and dealer reports. The requirement for observers to estimate the amount of catch in the fish hold was intended to enhance catch monitoring in the herring fishery by providing an independent estimate of total catch.

This measure was developed to address stakeholder concerns with NMFS's reliance on industry-reported catch data to monitor the herring fishery. Specifically, some stakeholders, including environmental organizations, the groundfish industry, and recreational fishing groups, believe that herring catch is not accurately reported by the industry and that large discrepancies exist between vessel and dealer reports. The herring industry, in general, does not believe that herring catch is being misreported but, in an effort to address stakeholder concerns, supports the requirement for observers to collect an estimate of total catch.

Framework 4 does not provide evidence of misreporting by the herring industry, but it does highlight past differences, that have since been minimized, between the amount of herring reported by vessels and dealers. In past years, discrepancies between VTRs and dealer data have been as large as 54 percent. But recently, GARFO staff has improved the process for cross-checking and resolving differences between VTRs and dealer data. Now discrepancies between VTRs and dealer data are minimal, with differences averaging 1 percent. Because discrepancies between VTRs and dealer data are now minimal, NMFS does not believe that the proposed measure requiring volumetric estimates of total catch is necessary to help resolve discrepancies between VTR and dealer data.

Vessels and dealers report catch by species. VTRs, in combination with observer data, are used in herring stock assessments, while a combination of dealer data, VTR, and VMS, and observer data are used to track catch against herring annual catch limits and catch caps in the herring fishery. The measure requiring volumetric catch estimates would have provided an estimate of total catch, but would not have differentiated catch by species. Because the volumetric estimate would not have provided catch by species, it could not have been used to replace VTRs or dealer data nor could it have been used for catch monitoring or stock assessments.

Additionally, Framework 4 cautions whether the proposed measure would be more accurate than methods currently used by vessel operators or dealers to estimate catch. The volumetric conversion proposed in Framework 4 is based on herring harvested in other parts of the world. Using a volumetric conversion assumes consistency in the size, weight, and density of the catch, but there can be substantial variability in the catch composition of the herring fishery, depending on the area and season. Additionally, the proposed 5 percent deduction from total weight to account for water in the tanks is based on industry practices, but the Council did not rigorously evaluate the amount of the deduction. For these reasons, Framework 4 explains that converting a volume of total fish to pounds based on the proposed conversion could produce less accurate catch estimates than current vessel or dealer estimates.

The measure requiring a volumetric catch estimate is unlikely to improve catch monitoring in the herring fishery because that estimate cannot be used to replace VTR or dealer report to monitor catch and it is not necessary to resolve minimal discrepancies between VTR and dealer data. In contrast, the compliance costs associated with the measure may be high. If a vessel's fish holds are not already certified, the vessel owner would need to pay to have the fish holds certified. NMFS would need to significantly develop the measure prior to implementation, including generating a sampling protocol, approving volume to weight conversions and deductions to account for water in the fish hold, training observers, and evaluating how to use the data. Additionally, requiring observers to sample vessels in port would require modifications to the description of observer duties and contracts with observer service providers.

For these reasons, NMFS concluded that the measure requiring fish holds to be certified and observers to collect volumetric catch estimates is inconsistent with the requirements of the Magnuson-Stevens Act, APA, and PRA. The measure is inconsistent with the APA because there is insufficient support in Framework 4 documenting the need for this measure and how this measure would address the purported need. The measure is inconsistent with the requirements of Magnuson-Stevens Act National Standard 7 and the PRA because the benefit of the volumetric catch estimate is dubious and does not outweigh the additional burden on vessel owners of certifying their fish holds and making available a measuring stick for observers. The measure is inconsistent with Magnuson-Stevens Act National Standard 2 because the quality of the volumetric catch estimate is not sufficient for monitoring the fishery, facilitating inseason management, or judging the performance of the management regime. Finally, the measure is inconsistent with Magnuson-Stevens Act National Standard 5 because it does not allow the fishery to operate at the lowest possible administrative costs relative to any additional monitoring benefit provided by the measure.

Empty Fish Holds

Framework 4 would have required fish holds of vessels with Category A or B Limited Access Herring Permits to be empty of fish before leaving the dock on a herring trip. A waiver may have been issued by an authorized law enforcement officer when fish have been reported as caught but cannot be sold due to the condition of fish.

The Council recommended this measure to enhance catch monitoring and discourage wasteful fishing practices in the herring fishery. Some stakeholders are concerned that vessels are harvesting more fish than they can sell and then discarding the unsold fish on subsequent fishing trips. These stakeholders are also concerned that fish not purchased by a dealer, and discarded on subsequent trips, may not be reported on the VTR. The Council intended this measure to discourage the discarding of unreported fish, provide a mechanism to document when harvested fish become unmarketable, and prevent vessel operators from mixing fish from multiple trips in the hold, potentially biasing catch data.

While prohibiting the disposal of unsold fish at sea may discourage wasteful fishing practices, there is insufficient support in the record to conclude that herring vessels are harvesting excess fish and discarding unsold fish at sea. The costs associated with a herring trip, including fuel, crew wages, and insurance, are substantial, so it is unlikely that vessel operators are making herring trips to harvest fish that will ultimately be discarded. Additionally, if discarding of unsold fish at sea is occurring, Framework 4 explains that it is unclear whether unsold catch disposed of at sea on a subsequent trip is reported.

Initially, this measure requiring empty fish holds simply required that fish holds be empty of fish at the beginning of a herring trip. But recognizing that there may be unforeseen events making it difficult to sell fish (*e.g.,* refrigeration failure, poor condition, lack of market), the Council recommended the waiver provision to mitigate the potential costs associated with disposing of unmarketable catch on land. The Council intended the waiver to provide a mechanism to verify that fish had been reported and document the nature and extent to which vessels are departing on trips with fish in their fish holds. Additionally, some vessels in the herring fishery land their catch in multiple ports, and the Council intended that the waiver provision would allow that practice to continue.

Part of the justification for the waiver provision is to provide a way to verify that fish have been reported and to document the extent to which vessels are departing on trips with fish in their fish holds. However, Framework 4's proposed waiver provides no way of verifying the amount of fish reported relative to the amount of fish left in the hold. Therefore, NMFS does not believe that this measure contains a viable mechanism to verify whether harvested fish that are left in the hold were reported by the vessel.

Because the measure lacks a mechanism to verify or correct the amount of fish reported on the VTR, the measure is unlikely to improve catch monitoring in the herring fishery. In contrast, the compliance and enforcement costs associated with the measure may be high. For example, vessel operators needing to dispose of fish at sea may lose time and money waiting for an authorized law enforcement officer to travel to their vessel, inspect the fish in the fish hold, and issue a waiver. Additionally, it would likely be time consuming for authorized officers to issue waivers and would divert resources from other law enforcement duties.

This measure is also intended to prevent vessel operators from mixing catch from multiple trips in the hold and biasing catch data. NEFOP observers sample the catch while it is on the deck, before it is placed in the fish hold, so there would be no chance that observers would be sampling fish from multiple trips that were mixed in the hold. The herring fishery is also sampled portside by the Massachusetts Department of Marine Fisheries (MA DMF) and Maine's Department of Marine Resources. Mixing of catch from multiple fishing trips, although unlikely, may have the potential to bias landings data used to inform herring stock assessments, state management spawning closures, and the river herring avoidance program operated by the University of Massachusetts' School of Marine Fisheries and MA DMF.

The Atlantic States Marine Fisheries Commission recently adopted a requirement that vessel fish holds be empty of fish before vessels depart on a herring trip, contingent on adoption in Federal waters, in Amendment 3 to the Interstate FMP for Atlantic Herring. Establishing a similar provision in this action would have promoted coordination between Federal and state management, but, for the reasons described above, it is unlikely to improve catch monitoring in the herring fishery.

For these reasons, NMFS concluded that the measure requiring fish holds to be empty of fish before leaving port, unless a waiver is issued by an authorized officer, is inconsistent with the requirements of the Magnuson-Stevens Act, APA, and PRA. The measure is inconsistent with the APA because there is insufficient support in Framework 4 documenting the need for this measure and how this measure would address the purported need. The measure is inconsistent with Magnuson-Stevens Act National Standard 7 and the PRA because the benefit of requiring empty fish holds when departing on a herring trip does not outweigh the additional reporting burden on vessel operators to request and obtain a waiver from an authorized officer. The measure is inconsistent with Magnuson-Stevens Act National Standard 7 because it does not provide fishermen with the greatest possible freedom of action in conducting business and imposes an unnecessary enforcement burden. Finally, the measure is inconsistent with Magnuson-Stevens Act National Standard 5 because it does not allow the fishery to operate at the lowest possible administrative and enforcement costs relative to any additional monitoring benefit provided by the measure.

Comments and Responses

NMFS received four comment letters on the proposed rule. Two letters were from environmental advocacy groups (Herring Alliance and CHOIR (Coalition for the Atlantic Herring Fishery's Orderly, Informed, and Responsible Long Term Development)) and two letters were from herring industry groups (Seafreeze Ltd. and the Sustainable Fisheries Coalition).

Comment 1: The Herring Alliance supports proposed measures in Framework 4 that would clarify the slippage definition and require slippage to be reported via the daily VMS catch report.

Response: NMFS is implementing measures to clarify the slippage definition and require slippage to be reporting via the daily VMS catch report.

Comment 2: CHOIR expressed concern with the potential for increased discarding of unsampled catch associated with the clarifications to existing slippage measures that allow for operational discards and catch that falls out of or off gear. Despite its concern, CHOIR supports the proposed clarifications to existing slippage measures, because it believes that the proposed slippage consequence measures will drastically improve management of herring fishery.

Response: NMFS agrees with CHOIR that slippage consequence measures will likely improve management of the herring fishery, but disagrees with CHOIR that continuing to allow for operational discards and fish that fall out of or off gear would increase the discarding of unsampled catch.

Framework 4 maintains the existing requirements that prohibit operational discards aboard midwater trawl vessels fishing in the Groundfish Closed Areas, but allows operational discards to occur on board herring vessels fishing outside the Groundfish Closed Areas. Framework 4 clarifies that operational discards are small amounts of fish that cannot be pumped on board and remain in the codend or seine at the end of pumping operations. Current observer protocols include estimating the amount and composition of operational discards. Because the fish cannot be pumped, it can be time and labor intensive to bring these small amounts of fish on board the vessel. There is no evidence in Framework 4 to suggest that continuing to allow operational discards would increase the discarding of unsampled catch. Rather, Framework 4 concludes that the compliance costs associated with requiring herring vessels fishing outside the Groundfish Closed Areas to bring operational discards on board would likely outweigh any benefits to the catch monitoring program and the herring resource.

Framework 4 clarifies that catch that falls out of or off of gear and is not brought on board would be categorized as discarded catch, but not slippage. In general, only small amounts of catch fall out or off of gear during fishing and/or when catch is being brought aboard the vessel, unlike the potential for catch loss due to mechanical failure. It would be very difficult for vessels to retrieve the small amounts of fish that fall out of or off gear and bring those fish on board the vessel. Again, there is no evidence in Framework 4 suggesting that this measure would increase the discarding of unsampled catch and the compliance costs associated with requiring these fish be brought on board the vessel for sampling would likely outweigh any benefit to herring catch monitoring.

Comment 3: The Sustainable Fisheries Coalition supports minor clarifications and corrections to existing measures because it believes they are not a substantive change to current regulations and are consistent with the Herring FMP. The Sustainable Fisheries Coalition also supports categorizing catch not brought on board due to gear damage as an allowable slippage event and catch that falls out of or off gear as a discard event. The Sustainable Fisheries Coalition supports continuing to allow operational discards in the herring fishery, except on board herring vessels fishing in the Groundfish Closed Areas, noting that the costs of prohibiting operational discards would likely outweigh any benefits. Lastly, the Sustainable Fisheries Coalition has no objection to the proposed requirement to report slippage via the VMS daily catch report.

Response: NMFS agrees with the Sustainable Fisheries Coalition and the measures implemented in this final rule are consistent with the Sustainable Fisheries Coalition recommendations.

Comment 4: The Sustainable Fisheries Coalition supports including the definition of operational discards in the regulations, but suggests that the operational discards definition, as well as the slippage definition, be revised to acknowledge that releasing small amounts of fish from the codend or seine at the end of pumping operations is also operationally discarding catch.

Response: This final rule adds the definition of operational discards to regulations at § 648.2. Operational discards are defined as small amounts of fish that cannot be pumped on board the vessel and remain in the codend or seine at the end of pumping operations. Leaving small amounts of fish in the codend or seine at the end of pumping operations is operationally discarding catch. This final rule also categorizes instances of catch falling out or off of gear during fishing and/or when catch is being brought aboard the vessel as discarding, rather than slippage. Framework 4 explains that, in general, only small amounts of catch fall out or off of gear during fishing and/or when catch is being brought aboard the vessel. NMFS believes that categorizing catch that falls out of gear as discarding addresses the Sustainable Fisheries Coalition's recommendation to acknowledge releasing small amounts of fish from the codend or seine at the end of pumping operations is a discard event and not slippage.

Comment 5: CHOIR and the Herring Alliance support the proposed slippage consequence measures. CHOIR commented that proposed slippage consequence measures are vital to provide vessels with incentive to avoid slippage and the Herring Alliance commented that the proposed slippage consequence measures are reasonable, safe, and necessary to further deter slippage events on observed trips.

Response: NMFS is implementing the slippage consequence measures to help improve catch monitoring and further deter slippage in the herring fishery.

Comment 6: Seafreeze Ltd. and the Sustainable Fisheries Coalition do not support the proposed measure requiring vessels to move and remain at least 15 nautical miles (27.78 km) away from an allowable slippage event for the duration of that fishing trip.

Seafreeze Ltd. and the Sustainable Fisheries Coalition commented that because no scientific analysis supports the requirement to move 15 nautical miles (27.78 km), the measure is inconsistent with the requirement that measures be based on the best available science. Seafreeze Ltd. noted that fishing effort is often already spatially limited by regulations, oceanographic features, or fish distribution. Both Seafreeze Ltd. and the Sustainable Fisheries Coalition commented that requiring vessels to move 15 nautical miles (27.78 km) following an allowable slippage event may result in lost fishing opportunities and will not rectify the problem that caused the slippage event. Additionally, the Sustainable Fisheries Coalition commented that the measure raises concerns with the ability of the herring fleet to achieve the herring OY, the need to minimize adverse impacts on fishing communities, and the measure having a limited conservation benefit as bycatch has already been minimized to the extent practicable.

Seafreeze Ltd. noted that as spiny dogfish populations continue to increase, herring fishery interactions with dogfish will also likely increase. Seafreeze Ltd. also noted that vessels typically move from an area following interactions with dogfish, but they do not move as far as 15 nautical miles (27.78 km).

Seafreeze Ltd. and the Sustainable Fisheries Coalition commented that needing to slip catch for safety or mechanical failure is often beyond the control of the vessel operator. Seafreeze Ltd. also commented that requiring vessels to move 15 nautical miles (27.78 km) following allowable slippage events may pressure vessel operators to possibly engage in unsafe fishing practices to avoid a penalty. Additionally, Seafreeze Ltd. commented that penalizing a vessel for safety concerns violates National Standard 10.

Lastly, Seafreeze Ltd. commented that its bottom trawl vessels have higher observer coverage rates than other gear types participating in the herring fishery and would, therefore, be disproportionately impacted by the proposed slippage consequence measure following an allowable slippage event.

Response: NMFS disagrees with Seafreeze Ltd. and the Sustainable Fisheries Coalition that the slippage consequence measure requiring vessels to move and remain at least 15 nautical miles (27.78 km) away from an allowable slippage event for the duration of that fishing trip should not be approved.

NMFS anticipates this slippage consequence measure will address concerns about bycatch and slippage by discouraging the occurrence of slippage throughout the fishery, while continuing to promote safe and efficient fishing practices on vessels participating in the herring fishery. Safety is an important consideration for all fishery management plans and Framework 4 acknowledges that slippage events due to safety concerns or mechanical failure may be beyond the control of the vessel operator. NMFS expects the requirement to move 15 nautical miles (27.78 km) following an allowable slippage event will accommodate any safety concerns because it allows vessels to continue fishing, when it is safe to do so, rather than requiring trip termination.

NMFS also expects that this slippage consequence measure will enhance the catch monitoring program established through Amendment 5 by further discouraging slippage in the herring fishery. The requirement for a vessel to move following an allowable slippage event is not based on the biology or distribution of a fish species, like the Groundfish Closed Areas, nor is it intended to rectify mechanical failures, unsafe weather conditions, or encounters with spiny dogfish. Instead, the measure was based on an analysis evaluating the distances vessels move during fishing operations and is intended to provide sufficient incentive (*i.e.,* cost in time and fuel) for herring vessels to minimize slippage, while providing opportunities to utilize the herring OY. Options for moving 10 nautical miles (16.09 km) and 20 nautical miles (32.19 km) were also considered in Framework 4, but the 15-nautical mile (27.78-km) option was recommended by the Council because 15 nautical miles (27.78 km) is the median value between 10 nautical miles (16.09 km) and 20 nautical miles (32.19 km). Additionally, this measure applies uniformly to all vessels that slip catch, unlike other considered alternatives (*e.g.,* leaving a management area, leaving a statistical area) in Framework 4 where the magnitude of the move would have depended upon the location of the allowable slippage event.

Framework 4 describes the impact of this slippage consequence measure as a low negative for the herring industry. This impact is not related to safety concerns, but to the potential for lost time and money associated with moving following an allowable slippage event. Analyses in Framework 4 show that midwater trawl and purse seine vessels participating in the herring fishery have the potential to be most affected by the requirement to move following an allowable slippage event. Small mesh bottom trawl vessels are expected to be least affected by the move requirement because documented slippage events by those vessels are low.

NMFS implemented this same slippage consequence measure in the mackerel fishery as part of the measures recommended by the Mid-Atlantic Fishery Management Council in Framework 9 to the MSB FMP. Many vessels participate in both the herring and mackerel fisheries, and NMFS expects that implementing consistent slippage consequences across these fisheries will improve compliance and enforcement of slippage measures.

Comment 7: The Sustainable Fisheries Coalition supports the proposed measure requiring vessels to terminate a fishing trip and return to port following a non-allowable slippage event. With the exception of the allowable slippage events, the Sustainable Fisheries Coalition commented that vessels should be able to bring catch aboard and make it available to the observer for sampling. The Sustainable Fisheries Coalition noted that if the condition of the fish results in catch being unmarketable, those fish would be discarded after they were sampled by the observer.

Response: NMFS is implementing the requirement to terminate a fishing trip and return to port following a non-allowable slippage event.

Comment 8: CHOIR and the Herring Alliance support the measure requiring vessel fish holds to be certified and NEFOP observers to collect volumetric estimates of total catch. CHOIR noted that the volumetric catch estimate is especially important to confirm industry catch reports, given past instances of misreporting and when vessels and dealers both work for the same company. Even if observers only sporadically collected catch estimates, CHOIR commented that having a mechanism to confirm catch reports could improve catch reporting. Herring Alliance commented that third-party catch verification is needed to needed ensure industry catch reports are accurate, complete, and credible and that catch limits are not exceeded. The Herring Alliance explained that accurate landings data will improve stock assessments and aid in monitoring fishery catch caps. Additionally, the Herring Alliance noted that logistical and operational challenges associated with observers collecting volumetric estimates of catch, such as modifying the description of observer duties and contracts with observer service providers to require observers to sample vessels in port, are solvable.

Response: NMFS agrees with the Herring Alliance that it is possible to make the necessary programmatic changes to enable observers to collect volumetric estimates in port, but disagrees with CHOIR and the Herring Alliance that the proposed volumetric catch estimate is a cost-effective measure that is necessary to confirm industry catch reports and will improve catch reporting and stock assessments.

Vessels and dealers report catch by species. VTRs, in combination with observer data, are used in herring stock assessments, while a combination of dealer data, VTR, and VMS, and observer data are used to track catch against herring annual catch limits and catch caps in the herring fishery. The proposed measure would provide an estimate of total catch, but not catch by species. Therefore, the volumetric estimate could not be used to replace either VTRs or dealer data and it could not be used for catch monitoring or stock assessments.

Framework 4 does not provide evidence of misreporting by the herring industry, but it does highlight past differences, that have since been minimized, between the amount of herring reported by vessels and dealers. In recent years, discrepancies between VTRs and dealer data have been minimal. VTRs were higher than dealer reports in 2009 (2 percent), 2010 (1.3 percent), 2011 (1.2 percent), and 2013 (0.1 percent) and less than dealer reports in 2012 (0.1 percent). GARFO staff use a rigorous process to match vessel and dealer reported data and make corrections to the appropriate data set. Given that discrepancies between VTR and dealer data are minimal as well as investigated and resolved, NMFS does not consider the proposed volumetric catch estimate necessary to help identify or resolve discrepancies between VTR and dealer data.

NMFS disapproved the requirement for volumetric catch estimates because it considers the measure inconsistent with the Magnusson-Stevens Act, APA, and PRA.

Comment 9: Seafreeze Ltd. does not support the proposed measure requiring fish holds to be certified and NEFOP observers to collect volumetric estimates of total catch. The Sustainable Fisheries Coalition noted that its members did not reach a consensus whether the volumetric catch estimate should be approved or disapproved, but it expressed concern with the potential inaccuracies associated with the proposed measure. Additionally, the Sustainable Fisheries Coalition recommended that if the proposed measure was implemented, that it only apply to vessels whose fish holds had already been certified to help minimize vessel compliance costs. Seafreeze Ltd. also questioned the accuracy of the proposed volumetric estimates and expressed concern that the proposed measure would increase observer workload. Seafreeze Ltd. commented that because discrepancies between vessel and dealer reports are minimal, the proposed measure is not warranted. Lastly, Seafreeze Ltd. noted that the proposed measure would not be applicable to the Seafreeze Ltd. vessels that offload frozen product.

Response: NMFS shares Seafreeze Ltd.'s and the Sustainable Fisheries Coalition's concern with the accuracy of the proposed volumetric catch estimates and disapproved this measure in Framework 4. The volumetric conversions proposed in Framework 4 are based on herring harvested in other parts of the world. Using a volumetric conversion assumes consistency in the size, weight, and density of the catch, but there can be substantial variability in the catch composition of the herring fishery, depending on the area and season. Additionally, the proposed 5 percent deduction from total weight to account for water in the tanks is based on industry practices, but the Council did not rigorously evaluate the amount of the deduction. For these reasons, Framework 4 questioned whether the proposed measure would be more accurate than methods currently used by vessel operators or dealers to estimate catch.

NMFS agrees with Seafreeze Ltd. that requiring observers to collect volumetric catch estimates would increase observer workload and that discrepancies between vessel and dealer reports are minimal. As described previously, volumetric estimates could not be used to replace either VTRs or dealer data and it could not be used for catch monitoring or stock assessments. Increasing observer workload with duties that are unlikely to improve herring catch monitoring is not an effective use of NMFS resources. As described previously, NMFS does not consider the proposed volumetric catch estimate necessary to help identify or resolve the minimal discrepancies between VTR and dealer data.

Lastly, the measure, as proposed, would have required all vessels with limited access herring permits to have their fish holds certified and observers to collect volumetric catch estimates. Limiting the measure to only apply to vessels whose fish holds had already been certified would have meant substantially revising the measure. NMFS can only approve or disapprove a proposed measure; therefore, NMFS cannot revise the measure to only apply to vessels whose fish holds have already been certified.

Comment 10: CHOIR and Herring Alliance support the proposed measure requiring fish holds to be empty of fish before a vessel departs on a herring trip, unless a waiver has been issued. CHOIR expressed concern with the perceived practice of fish being harvested without a confirmed buyer and unsold fish being discarded at sea, especially when discarded fish may not have been reported. CHOIR surmised that requiring empty fish holds would likely ensure that vessels do not harvest excess fish or discard unsold fish at sea.

Response: The proposed measure requiring empty fish holds was intended to enhance catch monitoring and discourage wasteful fishing practices in the herring fishery. While prohibiting the disposal of unsold fish at sea may discourage wasteful fishing practices, there is insufficient support in the record to conclude that herring vessels are harvesting excess fish and discarding unsold fish at sea. The costs associated with a herring trip, including fuel, crew wages, and insurance, are substantial, so it is unlikely that vessel operators are making herring trips to harvest fish that will ultimately be discarded. Additionally, if discarding of unsold fish at sea is occurring, Framework 4 explains that it is unclear whether unsold catch disposed of at sea on a subsequent trip is reported.

Part of the justification for the waiver provision is to provide a way to verify that fish have been reported and document the extent to which vessels are departing on trips with fish in their fish holds. However, Framework 4's proposed waiver provides no way of verifying the amount of fish reported relative to the amount of fish left in the hold. Therefore, NMFS does not believe this measure contains a viable mechanism to verify whether harvested fish that are left in the hold were reported by the vessel and is unlikely to improve catch monitoring in the herring fishery.

NMFS disapproved the requirement for empty fish holds because it considers the measure inconsistent with the Magnusson-Stevens Act, APA, and PRA.

Comment 11: Seafreeze Ltd. does not support the proposed measure requiring fish holds to be empty of fish before a vessel departs on a herring trip. Seafreeze Ltd. noted that its processing vessels produce a frozen, processed product that would not be discarded at sea. Additionally, Seafreeze Ltd. noted that fish cannot be pumped out of the fish hold of its harvesting vessel at sea, only in port. For these reasons, Seafreeze Ltd. commented that this measure is not applicable to its vessels and would impact the vessels unnecessarily.

Response: NMFS disapproved this measure in Framework 4, so the application to frozen fish is not relevant.

However, had NMFS approved the measure, it would not have applied to a frozen product or fish stored in freezers.

Comment 12: The Sustainable Fisheries Coalition did not have consensus whether the empty fish hold requirement should be approved or disapproved, but it commented that Framework 4 does not provide evidence of the misreporting and wasteful fishing practices that the empty fish hold requirement is intended to rectify. The Sustainable Fisheries Coalition noted that rarely does a vessel leave port with fish in its hold unless it is offloading at multiple locations, storing fish for which there is no immediate market, or disposing of poor quality fish. Given the absence of a clearly documented problem, the Sustainable Fisheries Coalition commented that the cost of delaying a trip to obtain a waiver, in order to depart on a herring trip with fish in the hold, would be a hardship.

Response: As described previously, there is insufficient evidence in Framework 4 to support claims of misreporting and wasteful fishing practices. Additionally, because the proposed measure lacks a mechanism to verify or correct the amount of fish reported on the VTR, the proposed measure is unlikely to improve catch monitoring in the herring fishery. In contrast, the compliance and enforcement costs associated with the proposed measure may be high. For example, vessel operators needing to dispose of fish at sea may lose time and money waiting for an authorized law enforcement officer to travel to their vessel, inspect the fish hold, and issue a waiver. Additionally, it would likely be time consuming for authorized officers to issue waivers and would divert resources from other law enforcement duties.

Comment 13: The Herring Alliance and CHOIR also commented on initiatives to increase monitoring in the herring fishery that are related to this action, but are outside the scope of measures considered and approved as part of Framework 4. Specifically, the commenters recommended that slippage consequence measures should apply if electronic monitoring is to be used to monitor the herring fishery and that NMFS should provide reasonable cost estimates for electronic monitoring as soon as possible to prevent a delay in allowing industry-funded monitoring to increase monitoring of the herring fishery.

Response: NMFS is working with the Council to develop measures related to these issues. Although NMFS understands the connection between these measures and slippage consequence measures established in this action, these additional initiatives are outside the scope of Framework 4.

Changes From the Proposed Rule

The proposed rule for Framework 4 contained all the measures in that were adopted by the Council in April 2014. As described previously, NMFS disapproved the measures requiring fish holds to be certified and observers to collect volumetric catch estimates, and fish holds to be empty of fish before leaving port, unless a waiver is issued by an authorized law enforcement officer. Thus, the regulatory requirements associated with those two measures are not included in this final rule. Specifically, the following sections from the proposed rule have been removed: §§ 648.4(a)(10)(iv)(P), 648.11(m)(5), 648.14(r)(1)(ii)(D), 648.14(r)(2)(xiii), and 648.204(c) are not being implemented in this rule. Additionally, proposed § 648.11(m)(3)(ii) was revised to remove provisions related to providing an observer with a NMFS-approved measuring stick when requested.

This final rule also contains minor clarifications to the slippage definition, slippage reporting requirements, and slippage consequence measures to ensure consistency with slippage requirements for the Atlantic mackerel fishery. Specifically, the following sections have been revised: §§ 648.2, 648.11(m)(4)(C)(iv), and 648.14(r)(2)(vii), (xi), and (xii). Many vessels participate in both the herring and mackerel fisheries and NMFS expects that implementing consistent requirements across these fisheries will improve compliance and enforcement of slippage requirements. NMFS is revising the regulations under the authority of section 305(d) to the Magnuson-Stevens Act, which provides that the Secretary of Commerce may promulgate regulations necessary to ensure that framework adjustments to FMPs are carried out in accordance with the FMP and the Magnuson-Stevens Act.

Classification

The Assistant Administrator for Fisheries, NOAA, has determined that this rule is consistent with the national standards and other provisions of the Magnuson-Stevens Act and other applicable laws.

The Office of Management and Budget has determined that this rule is not significant according to Executive Order 12866.

This final rule does not contain policies with federalism or "takings" implications, as those terms are defined in E.O. 13132 and E.O. 12630, respectively.

NMFS, pursuant to section 604 of the Regulatory Flexibility Act (RFA), has completed a final regulatory flexibility analysis (FRFA) in support of Framework 4 in this final rule. The FRFA incorporates the IRFA, a summary of the significant issues raised by the public comments in response to the IRFA, NMFS responses to those comments, a summary of the analyses completed in the Framework 4 EA, and this portion of the preamble. A summary of the IRFA was published in the proposed rule for this action and is not repeated here. A description of why this action was considered, the objectives of, and the legal basis for this rule is contained in Framework 4 and in the preamble to the proposed and this final rule, and is not repeated here. All of the documents that constitute the FRFA are available from NMFS and a copy of the IRFA, the RIR, and the EA are available upon request (see **ADDRESSES**) or via the Internet at *www.greateratlantic.fisheries.noaa.gov.*

Summary of the Significant Issues Raised by the Public Comments in Response to the IRFA, a Summary of the Agency's Assessment of Such Issues, and a Statement of Any Changes Made in the Final Rule as a Result of Such Comments

NMFS received four comment letters on the proposed rule. Those comments, and NMFS' responses, are contained in the Comments and Responses section of this final rule and are not repeated here. None of the comments addressed the IRFA and NMFS did not make any changes in the final rule based on public comment.

Description and Estimate of Number of Small Entities to Which the Rule Would Apply

This action regulates the activity of vessels with limited access herring permits and vessels with Category A or B limited access herring permits. Therefore, the regulated entity is the business that owns at least one limited access herring permit.

In 2013, the most recent full year of fishery permit data, 93 fishing vessels were issued a limited access herring permit. Vessels and/or permits may be owned by entities affiliated by stock ownership, common management, identity of interest, contractual relationships, or economic dependency. For the purposes of this analysis, ownership entities are defined as those entities with common ownership personnel as listed on permit application documentation. Only permits with identical ownership personnel are categorized as an affiliated entity. For example, if five permits have the same seven personnel listed as co-owners on their application paperwork, those seven personnel form one ownership entity, covering those five permits. If one or several of the seven owners also own additional vessels, with sub-sets of the original seven personnel or with new co-owners, those ownership arrangements are deemed to be separate entities for the purpose of this analysis.

Based on this ownership criterion, NMFS dealer data for recent years (2010–2013), and the size standards for finfish and shellfish firms, there are 68 regulated fishing firms with a limited access herring permit. Of those 68 firms, there are 61 small entities and 7 large entities. Not all of these permitted firms are active: Only 32 small entities and 5 large entities were actively fishing for herring during the last 3 years. Additionally, there are 32 regulated fishing firms that hold Category A or B herring permits. Of those 32 firms, there are 27 small entities and 5 large entities. Not all of these permitted firms are active: Only 19 small entities and 5 large entities holding Category A or B herring permits were actively fishing for herring during the last 3 years.

Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements

This final rule contains collection-of-information requirements subject to the PRA that have been approved by the OMB under Control Number 0648–0202.

This action requires all limited access vessels to report slippage events via the daily VMS herring catch report. This information is intended to improve catch monitoring in the herring fishery. All limited access herring vessels are currently required to submit daily VMS catch reports, therefore, reporting slippage via VMS is not expected to cause any additional time or cost burden above that which was previously approved under OMB Control Number 0648–0202. Time burdens that were previously approved through OMB Control Number 0648–0202 include an estimated burden of 5 minutes to complete daily catch reports, with an additional 2 minutes if the vessel is also reporting all fish kept, and a total burden of 429 hours. Cost burdens that were previously approved through OMB Control Number 0648–0202 include an estimated burden of $0.60 per transmission of daily catch reports and a total burden of $2,323. In a given fishing year, NMFS estimates that the additional reporting requirements included in Framework 4 will not cause any additional time or cost burden from that which was previously approved. Send comments regarding these burden estimates or any other aspect of this data collection, including suggestions for reducing the burden, to NMFS (see **ADDRESSES**) and by email to *OIRA_Submission@omb.eop.gov,* or fax to (202) 395–7285.

Notwithstanding any other provisions of the law, no person is required to, nor shall any person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the PRA, unless that collection of information displays a currently valid OMB Control Number. All currently approved NOAA collections of information may be viewed at: *http://www.cio.noaa.gov/services_programs/prasubs.html.*

Description of the Steps the Agency Has Taken To Minimize the Significant Economic Impact on Small Entities Consistent With the Stated Objectives of Applicable Statutes

NMFS disapproved two measures in Framework 4 because it determined the measures were inconsistent with the Magnuson-Stevens Act, APA, and PRA.

One of the disapproved measures in Framework 4 would have required owners of vessels with limited access herring permits to certify the capacity of their fish holds and purchase and carry a NMFS-approved measuring stick to estimate the volume of fish in the fish hold. Each fish hold certification done by a certified marine surveyor is estimated to cost $300–$400. The cost of the NMFS-approved measuring stick is unknown at this time, but expected to be minimal. Ninety-three vessels were issued a limited access herring permit in 2013. Therefore, an estimated 93 vessels would have been required to submit a fish hold certification at the time of permit issuance in 2016 and obtain and carry on board a NMFS-approved measuring stick. By disapproving this measure, vessel owners will not incur the costs associated with this measure.

The other disapproved measure in Framework 4 would have required vessels with Category A or B herring permits to have fish holds empty of fish prior to departing on a herring trip. A waiver may have been issued by an authorized law enforcement officer when fish had been reported as caught but could not be sold due to condition. Forty-three vessels were issued a Category A or B herring permit in 2013. Therefore, an estimated 43 vessels would have been required to obtain a waiver from an authorized officer prior to leaving the dock on a herring trip with fish in the hold. The burden to the vessel operator/owner associated with obtaining a waiver would be any loss of time and/or money waiting for an authorized officer to travel to their vessel, inspect the fish hold, and issue a waiver. By disapproving this measure, vessel owners will not incur the burden associated with this measure.

NMFS is implementing slippage consequence measures for vessels with Category A and B herring permits in this rule, including requirements to move 15 nautical miles (27.78 km) following an allowable slippage event and terminate a trip following a non-allowable slippage event. Because non-allowable slippage events are already prohibited in the herring fishery, NMFS expects that instances of vessels terminating a trip and returning to port following a non-allowable slippage event will be rare. Therefore, the requirement to terminate a trip following a non-allowable slippage event will not have a significant economic impact on vessels with Category A and B herring permits. NMFS also expects that the requirement to move 15 nautical miles (27.78 km) following an allowable slippage event will also not have a significant economic impact on Category A and B vessels. The measure is based on an analysis evaluating the distances vessels move during fishing operations and is intended to provide sufficient incentive (*i.e.,* cost in time and fuel) for herring vessels to minimize slippage, while still promoting safety at sea and maximizing opportunities to utilize the herring OY. Options for moving 10 nautical miles (16.09 km) and 20 nautical miles (32.19 km) were also considered in Framework 4, but the 15-nautical mile (27.78-km) option is being implemented because 15 nautical miles (27.78 km) is the median value between 10 nautical miles (16.09 km) and 20 nautical miles (32.19 km). Additionally, this measure applies uniformly to all vessels that slip catch, unlike other considered alternatives (*e.g.,* leaving a management area, leaving a statistical area) in Framework 4 where the magnitude of the move, and resulting economic impacts, would have depended upon the location of the allowable slippage event.

This rule also implements clarifications and minor corrections to existing regulations. These clarifications and minor corrections are intended to clarify existing slippage measures; allow vessels to transit herring management areas during periods when zero percent of the sub-ACL for those areas is available for harvest, provided gear was stowed and not available for use; and correcting coordinates for Herring

Management Area 2 to more accurately define the area. NMFS expects these clarifications and corrections to facilitate operation of the herring fishery.

List of Subjects in 50 CFR Part 648

Fisheries, Fishing, Recordkeeping and reporting requirements.

Dated: March 29, 2016.

Samuel D. Rauch III,

Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 648 is amended as follows:

PART 648—FISHERIES OF THE NORTHEASTERN UNITED STATES

■ 1. The authority citation for part 648 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

■ 2. In § 648.2, the definition for "Slippage in the Atlantic herring fishery" is removed and the definitions for "Operational discards in the Atlantic herring fishery" and "Slip(s) or slipping catch in the Atlantic herring fishery" are added in alphabetical order to read as follows:

§ 648.2 Definitions.

* * * * *

Operational discards in the Atlantic herring fishery means small amounts of fish that cannot be pumped on board and remain in the codend or seine at the end of pumping operations. Leaving small amounts of fish in the codend or seine at the end of pumping operations is operationally discarding catch.

* * * * *

Slip(s) or slipping catch in the Atlantic herring fishery means discarded catch from a vessel issued an Atlantic herring permit that is carrying a NMFS-approved observer prior to the catch being brought on board or prior to the catch being made available for sampling and inspection by a NMFS-approved observer after the catch is on board. Slip(s) or slipping catch includes releasing fish from a codend or seine prior to the completion of pumping the fish on board and the release of fish from a codend or seine while the codend or seine is in the water. Slippage or slipped catch refers to fish that are slipped. Slippage or slipped catch does not include operational discards, discards that occur after the catch is brought on board and made available for sampling and inspection by a NMFS-approved observer, or fish that inadvertently fall out of or off fishing gear as gear is being brought on board the vessel.

* * * * *

■ 3. In § 648.11, paragraph (m)(4) is revised to read as follows:

§ 648.11 At-sea sea sampler/observer coverage.

* * * * *

(m) * * *

(4) *Measures to address slippage.* (i) No vessel issued a limited access herring permit may slip catch, as defined at § 648.2, except in the following circumstances:

(A) The vessel operator has determined, and the preponderance of available evidence indicates that, there is a compelling safety reason; or

(B) A mechanical failure, including gear damage, precludes bringing some or all of the catch on board the vessel for inspection; or,

(C) The vessel operator determines that pumping becomes impossible as a result of spiny dogfish clogging the pump intake. The vessel operator shall take reasonable measures, such as strapping and splitting the net, to remove all fish which can be pumped from the net prior to release.

(ii) Vessels may make test tows without pumping catch on board if the net is re-set without releasing its contents provided that all catch from test tows is available to the observer to sample when the next tow is brought on board for sampling.

(iii) If a vessel issued any limited access herring permit slips catch, the vessel operator must report the slippage event on the Atlantic herring daily VMS catch report and indicate the reason for slipping catch. Additionally, the vessel operator must complete and sign a Released Catch Affidavit detailing: The vessel name and permit number; the VTR serial number; where, when, and the reason for slipping catch; the estimated weight of each species brought on board or slipped on that tow. A completed affidavit must be submitted to NMFS within 48 hr of the end of the trip.

(iv) If a vessel issued an All Areas or Areas 2/3 Limited Access Herring permit slips catch for any of the reasons described in paragraph (m)(4)(i) of this section, the vessel operator must move at least 15 nm (27.78 km) from the location of the slippage event before deploying any gear again, and must stay at least 15 nm (27.78 km) away from the slippage event location for the remainder of the fishing trip.

(v) If catch is slipped by a vessel issued an All Areas or Areas 2/3 Limited Access Herring permit for any reason not described in paragraph (m)(4)(i) of this section, the vessel operator must immediately terminate the trip and return to port. No fishing activity may occur during the return to port.

* * * * *

■ 4. In § 648.14, paragraph (r)(1)(vii)(F) is added and paragraphs (r)(2)(v) through (xii) are revised to read as follows:

§ 648.14 Prohibitions.

* * * * *

(r) * * *

(1) * * *

(vii) * * *

(F) Transit or be in an area that has zero percent sub-ACL available for harvest specified at § 648.201(d) with herring on board, unless such herring were caught in an area or areas with an available sub-ACL specified at § 648.201(d), all fishing gear is stowed and not available for immediate use as defined in § 648.2, and the vessel is issued a vessel permit that authorizes the amount of herring on board for the area where the herring was harvested.

* * * * *

(2) * * *

(v) Fish with midwater trawl gear in any Northeast Multispecies Closed Area, as defined in § 648.81(a) through (e), without a NMFS-approved observer on board, if the vessel has been issued an Atlantic herring permit.

(vi) Slip or operationally discard catch, as defined at § 648.2, unless for one of the reasons specified at § 648.202(b)(2), if fishing any part of a tow inside the Northeast Multispecies Closed Areas, as defined at § 648.81(a) through (e).

(vii) Fail to immediately leave the Northeast Multispecies Closed Areas or comply with reporting requirements after slipping catch or operationally discarding catch, as required by § 648.202(b)(4).

(viii) Slip catch, as defined at § 648.2, unless for one the reasons specified at § 648.11(m)(4)(i).

(ix) For vessels with All Areas or Areas 2/3 Limited Access Herring Permits, fail to move 15 nm (27.78 km), as required by § 648.11(m)(4)(iv) and § 648.202(b)(4)(iv).

(x) For vessels with All Areas or Areas 2/3 Limited Access Herring Permits, fail to immediately return to port, as required by § 648.11(m)(4)(v) and § 648.202(b)(4)(iv).

(xi) Fail to complete, sign, and submit a Released Catch Affidavit as required by § 648.11(m)(4)(iii) and § 648.202(b)(4)(ii).

(xii) Fail to report or fail to accurately report a slippage event on the Atlantic herring daily VMS catch report, as required by § 648.11(m)(4)(iii) and § 648.202(b)(4)(iii).

* * * * *

§ 648.80 [Amended]

■ 5. In § 648.80, paragraph (d)(7) is removed.

■ 6. In § 648.200, paragraph (f)(2) is revised to read as follows:

§ 648.200 Specifications.

* * * * *

(f) * * *

(2) *Management Area 2 (South Coastal Area):* All state and Federal waters inclusive of sounds and bays, bounded on the east by 70°00′ W. long. and the outer limit of the U.S. Exclusive Economic Zone; bounded on the north and west by the southern coastline of Cape Cod, Massachusetts, and the coastlines of Rhode Island, Connecticut, New York, New Jersey, Delaware, Maryland, Virginia, and North Carolina; and bounded on the south by a line following the lateral seaward boundary between North Carolina and South Carolina from the coast to the Submerged Lands Act line, approximately 33°48′46.37″ N. lat., 78°29′46.46″ W. long., and then heading due east along 33°48′46.37″ N. lat. to the outer limit of the US Exclusive Economic Zone.

* * * * *

■ 7. In § 648.201, paragraphs (e) and (f) are revised and paragraph (g) is added to read as follows:

§ 648.201 AMs and harvest controls.

* * * * *

(e) A vessel may transit an area that has zero percent sub-ACL available for harvest specified in paragraph (d) of this section with herring on board, provided such herring were caught in an area or areas with sub-ACL available specified in paragraph (d) of this section, that all fishing gear is stowed and not available for immediate use as defined in § 648.2, and the vessel is issued a permit that authorizes the amount of herring on board for the area where the herring was harvested.

(f) Up to 500 mt of the Area 1A sub-ACL shall be allocated for the fixed gear fisheries in Area 1A (weirs and stop seines) that occur west of 67°16.8′ W. long (Cutler, Maine). This set-aside shall be available for harvest by fixed gear within the specified area until November 1 of each fishing year. Any portion of this allocation that has not been utilized by November 1 shall be restored to the sub-ACL allocation for Area 1A.

(g) *Carryover.* Subject to the conditions described in this paragraph (g), unharvested catch in a herring management area in a fishing year (up to 10 percent of that area's sub-ACL) shall be carried over and added to the sub-ACL for that herring management area for the fishing year following the year when total catch is determined. For example, NMFS will determine total catch from Year 1 during Year 2, and will add carryover to the applicable sub-ACL(s) in Year 3. All such carryover shall be based on the herring management area's initial sub-ACL allocation for the fishing year, not the sub-ACL as increased by carryover or decreased by an overage deduction, as specified in paragraph (a)(3) of this section. All herring landed from a herring management area shall count against that area's sub-ACL, as increased by carryover. For example, if 500 mt of herring is added as carryover to a 5,000 mt sub-ACL, catch in that management area would be tracked against a total sub-ACL of 5,500 mt. NMFS shall add sub-ACL carryover only if the ACL, specified consistent with § 648.200(b)(3), for the fishing year in which there is unharvested herring, is not exceeded. The ACL, consistent with § 648.200(b)(3), shall not be increased by carryover specified in this paragraph (g).

8. In § 648.202, paragraphs (b)(2) introductory text, (b)(2)(ii), (b)(4) introductory text, and (b)(4)(ii) are revised, and paragraphs (b)(4)(iii) and (iv) are added to read as follows:

§ 648.202 Season and area restrictions.

* * * * *

(b) * * *

(2) No vessel issued an Atlantic herring permit and fishing with midwater trawl gear, when fishing any part of a midwater trawl tow in the Closed Areas, may slip or operationally discard catch, as defined at § 648.2, except in the following circumstances:

* * * * *

(ii) A mechanical failure, including gear damage, precludes bringing some or all of the catch on board the vessel for inspection; or,

* * * * *

(4) If catch is slipped or operational discarded by a vessel, the vessel operator must:

* * * * *

(ii) Complete and sign a Released Catch Affidavit detailing: The vessel name and permit number; the VTR serial number; where, when, and for what reason the catch was released; the estimated weight of each species brought on board or released on that tow. A completed affidavit must be submitted to NMFS within 48 hr of the end of the trip.

(iii) Report slippage events on the Atlantic herring daily VMS catch report and indicate the reason for slipping catch if the vessel was issued a limited access herring permit.

(iv) Comply with the measures to address slippage specified in § 648.11(m)(4)(iv) and (v) if the vessel was issued an All Areas or Areas 2/3 Limited Access Herring Permit.

[FR Doc. 2016–07583 Filed 4–1–16; 8:45 am]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 660

[Docket No.: 150629565–6224–02]

RIN 0648–BF15

Fisheries Off West Coast States; Comprehensive Ecosystem-Based Amendment 1; Amendments to the Fishery Management Plans for Coastal Pelagic Species, Pacific Coast Groundfish, U.S. West Coast Highly Migratory Species, and Pacific Coast Salmon

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Final rule.

SUMMARY: NMFS issues regulations to implement Comprehensive Ecosystem-Based Amendment 1 (CEBA 1), which includes amendments to the Pacific Fishery Management Council's (Council's) four fishery management plans (FMPs): the Coastal Pelagic Species (CPS) FMP, the Pacific Coast Groundfish FMP, the FMP for U.S. West Coast Highly Migratory Species (HMS), and the Pacific Coast Salmon FMP. CEBA 1 amended the Council's FMPs to bring new ecosystem component species (collectively, "Shared EC Species") into each of those FMPs, and prohibits directed commercial fisheries for Shared EC Species within the U.S. West Coast Exclusive Economic Zone (EEZ). This final rule defines and prohibits directed commercial fishing for Shared EC Species, and prohibits, with limited exceptions, at-sea processing of Shared EC Species.

DATES: Effective May 4, 2016.

ADDRESSES: Electronic copies of CEBA 1 may be obtained from the Council Web site at *http://www.pcouncil.org.* Electronic copies of the environmental assessment and final regulatory flexibility analysis for this action may be obtained from the West Coast Regional Office Web site at *http://www.westcoast.fisheries.noaa.gov/fisheries/ecosystem/index.html.*

FOR FURTHER INFORMATION CONTACT: Yvonne deReynier, 206–526–6129, *Yvonne.deReynier@noaa.gov.*

SUPPLEMENTARY INFORMATION:

Background

NMFS published a notice of availability of CEBA 1 in the **Federal Register** (80 FR 76924, December 11, 2015) to notify the public of the availability of the FMP amendments and invite comments. NMFS published a proposed rule to implement CEBA 1 on January 5, 2016 (81 FR 215). NMFS accepted public comments on the FMP amendments and proposed rule through February 9, 2016.

CEBA 1, through its implementing FMP amendments and regulations, prohibits the development of fisheries for a suite of ecosystem component species (collectively, "Shared EC Species") within the U.S. West Coast EEZ until the Council has had an adequate opportunity to both assess the scientific information relating to any proposed directed fishery and consider potential impacts to existing fisheries, fishing communities, and the greater marine ecosystem. CEBA 1 includes these FMP amendments: Amendment 15 to the CPS FMP, Amendment 25 to the Pacific Coast Groundfish FMP, Amendment 3 to the FMP for U.S. West Coast HMS, and Amendment 19 to the Pacific Coast Salmon FMP. CEBA 1 adds the following species as Shared EC Species to each of the four West Coast FMPs: round herring (*Etrumeus teres*) and thread herring (*Opisthonema libertate* and *O. medirastre*); mesopelagic fishes of the families *Myctophidae, Bathylagidae, Paralepididae,* and *Gonostomatidae;* Pacific sand lance (*Ammodytes hexapterus*); Pacific saury (*Cololabis saira*); silversides (family *Atherinopsidae*); smelts of the family *Osmeridae;* and pelagic squids (families: *Cranchiidae, Gonatidae, Histioteuthidae, Octopoteuthidae, Ommastrephidae* except Humboldt squid (*Dosidicus gigas,*) *Onychoteuthidae,* and *Thysanoteuthidae*).

This final rule revises 50 CFR 660.1(a) to clarify that the regulations in Part 660 of Title 50 of the Code of Federal Regulations are not limited to fishing for management unit species, but are applicable generally to vessels fishing within the U.S. West Coast EEZ. This rule also adds new regulations at 50 CFR part 660, subpart B, that: 1) identify Shared EC Species as including the unfished forage species listed earlier in the preamble to this rule; 2) define what is meant by "directed commercial fishing" for Shared EC Species within the U.S. West Coast EEZ; 3) prohibit directed commercial fishing for Shared EC Species; and 4) prohibit at-sea processing of Shared EC Species, except while otherwise lawfully processing groundfish in accordance with 50 CFR part 600, subpart D. This action is needed to proactively protect unmanaged, unfished forage fish of the U.S. West Coast EEZ, in recognition of the importance of these forage fish to the species managed under the Council's FMPs and to the larger California Current Ecosystem. Shared EC Species have not historically been targeted or processed in EEZ fisheries, and the limits provided in this final rule are intended to recognize that low levels of incidental catch of Shared EC Species may continue to occur. This action does not supersede tribal or state fishery management for these species.

Public Comments and Responses

NMFS received 63 letters and emails supporting the finalization of CEBA 1 and its implementing regulations during the public comment period. Within the letters of support, NMFS received a letter from the U.S. Department of the Interior requesting clarification on whether essential fish habitat (EFH) would be defined for Shared EC Species. Several letters from environmental organizations included petitions supporting the action, with signatures or comments from 91,966 people supporting the action. Two of the letters of support were received from organizations of fishermen and vessel owners asking for clarifications of or revisions to the regulations language. In addition to the letters and emails supporting the action, NMFS also received a letter from an organization of fishermen and vessel owners recommending clarifications to the final rule. NMFS appreciates the broad public interest in this rulemaking and has taken the strong public support it received during the comment period into account in its approval of this final rule. Comments requesting clarification on regulatory issues, or suggesting revisions to regulatory language implementing this action are summarized below, with NMFS's responses to those comments.

Comment 1: The Department of the Interior requests clarification on whether NMFS will designate EFH for Shared EC Species.

Response: NMFS will not designate EFH for Shared EC Species. Under Federal regulations at 50 CFR 600.805(b), EFH must be designated for all species within an FMP's fishery management unit. In contrast, federal regulations at 50 CFR 600.310(d)(5) characterize ecosystem component species as species that are: not in the fishery or fishery management unit, not the target of Federal fisheries, not overfished or approaching an overfished condition, and not generally retained for sale. Occasional retention of ecosystem component species does not preclude their characterization as ecosystem component species. The species identified by this action as within the Shared EC Species group meet the guidance at 50 CFR 600.310(d)(5) for classification as ecosystem component species, rather than as fishery management species. Therefore, NMFS does not need to designate EFH for Shared EC Species.

Comment 2: Some of the letters or emails supporting this action asked that NMFS also prohibit fishing for krill, either off the West Coast or elsewhere in the U.S., in addition to the prohibitions on fishing for species classified as Shared EC Species by this action.

Response: Under Federal regulations at 50 CFR 660.505(o), fishing for krill has been prohibited in the EEZ off the U.S. West Coast since 2009 (74 FR 33372, July 13, 2009). This action does not address fisheries occurring outside of the U.S. West Coast EEZ; furthermore there is no known fishing for krill by U.S. vessels on the high seas.

Comment 3: An organization representing fishermen and fishing vessel owners described upheavals in West Coast salmon and Dungeness crab fisheries resulting from recent unusual environmental conditions. The organization asked that NMFS or the Council provide guidance to the fishing industry on whether there are avenues for developing future sustainable fisheries on Shared EC Species, should the need arise.

Response: The Council explicitly considered this issue in developing CEBA 1 and made provisions for allowing future fishing interests to experiment with directed fishing for Shared EC Species, to provide the Council with scientific information that would allow it to consider opening a fishery for these species, considering potential impacts to existing fisheries, fishing communities, and the greater marine ecosystem. Although this action revises Federal regulations to prohibit directed fishing for Shared EC Species, some future Council could recommend revising those regulations to accommodate a sustainable directed fishery for a species now classified as a Shared EC Species. NMFS and the Council have a regular practice for existing West Coast fisheries of encouraging innovative gear types or fishing methods that may not be allowed in Federal regulations by considering exempted fishing permits (EFPs) for the proposed new gear type or fishing method. To ensure that the Council receives consistent and thoughtfully-designed EFP proposals, it maintains Operating Procedures outlining its requirements for considering EFPs for new or experimental fisheries or gear. As part of its work on CEBA 1, the Council adopted its Operating Procedure 24, a Protocol for Consideration of Exempted Fishing Permits for Shared Ecosystem Component Species. Ultimately, to allow a directed fishery for a species now classified as a Shared EC Species, the Council and NMFS would have to review the potential fishery and species for inclusion in an FMP as a fishery management unit species, and would then have to consider Federal regulations to implement that fishery. This process of considering revisions to fishing regulations by using information gained in EFP fisheries is common in the West Coast Federal fisheries management process. NMFS supports the Council's thorough work on the CEBA 1 package of FMP amendments, implementing regulations, and operating procedure for future potential EFPs. Together, the elements of CEBA 1 reflect an understanding of the current state of science on West Coast marine species and of the Federal fisheries laws and regulations that affect those species, while also leaving flexibility for future fishermen and fisheries managers to work with changes in the ecosystem and updates in fisheries and ocean science.

Comment 4: An organization representing companies that own whiting vessels noted that the Council described the purpose of CEBA 1 as prohibiting new directed commercial fishing in Federal waters on unmanaged, unfished forage fish species until the Council has had an adequate opportunity to both assess the scientific information relating to any proposed directed fishery and consider potential impacts to exiting fisheries, fishing communities, and the greater marine ecosystem. The commenter asks why the proposed rule implementing CEBA 1 appears to prohibit any directed fisheries for Shared EC species, rather than prohibiting only new directed fisheries for Shared EC Species.

Response: There are no existing directed fisheries for Shared EC Species in the U.S. West Coast EEZ; therefore, any future directed fishing for Shared EC Species would be new directed fishing. Adding the word "new" to the regulation would be confusing and superfluous.

Comment 5: An organization representing CPS fishermen and fishing vessel owners recommended that, in the preamble to this final rule, NMFS reiterate the Council's full purpose and need statement for CEBA 1. This organization also expressed concern that the proposed definition of directed fishing for Shared EC Species did not allow for high enough levels of incidental landings to account for unique historic events where Shared EC Species were taken incidentally with species managed under a Council FMP, and suggested that only the historically highest landings of 52 mt per day with an annual vessel limit of 225 mt per year would account for unique historic events. Finally, the organization noted that climate change could bring shifts in the composition of species occurring off the U.S. West Coast and asked that, in the final rule for this action, NMFS establish a two-year review period for this action to assess the impacts of the action.

Response: As discussed in the preamble to the proposed rule for this action, and as quoted by the commenter who submitted Comment 4, the purpose of this action, according to the environmental assessment for the action, is to "prohibit new directed commercial fishing in Federal waters on unmanaged, unfished forage fish species until the Council has had an adequate opportunity to both assess the scientific information relating to any proposed directed fishery and consider potential impacts to existing fisheries, fishing communities, and the greater marine ecosystem."

In the analysis that NMFS conducted to review potential limits for allowable incidental landings levels of Shared EC Species, NMFS noted that the highest daily landing level for the 2005–2014 period of groups of species that were predominantly Shared EC Species, but which could also have included Humboldt squid, was 52 mt. NMFS also noted that a daily incidental landing level of 10 mt would account for 99 percent of all historic daily landings levels. For annual total landings of species groups that were predominantly Shared EC Species, but which could also have included Humboldt squid, the highest historic annual landing level was 225 mt, while an annual limit of 30 mt would account for 97 percent of all historic annual landings levels. Between approximately 2006 and 2010 and peaking in 2008, the waters off the U.S. West Coast were inundated with large schools of Humboldt squid, which is not a Shared EC Species. Due to the somewhat surprising nature of this mass squid migration and population explosion, West Coast fisheries data collection programs were not initially equipped to separately identify Humboldt squid from other squid species on fish landings tickets. For these regulations, the Council recommended a Shared EC Species daily incidental landing limit of 10 mt and an annual cumulative landing limit of 30 mt, knowing that historic landings at those levels could possibly have included some Humboldt squid, also known as "jumbo" squid for its large size. NMFS believes that the limits recommended by the Council, provided in the proposed rule for this action, and finalized with this final rule, strike an appropriate balance between being high enough to account for unique historic incidental catch of Shared EC Species, without being so high as to allow or encourage targeting of those species. The NMFS analysis of historic West Coast landings of Shared EC Species, including discussions explaining the constraints of the fisheries landings data, is available on the Council's Web site for its September 2015 meeting: *http://www.pcouncil.org/wp-content/uploads/2015/08/D2a_SUP_NMFS_Rpt_forage_SEPT2015BB.pdf.*

The Council can schedule a review of these regulations and their effects at any time. Regulations at 50 CFR part 660 govern the actions of fishermen, fishing vessel owners, and fisheries participants operating in the U.S. West Coast EEZ. The scope of this action did not include the activities of the Council itself, and therefore this final rule does not include any provisions governing the actions of the Council.

Changes From the Proposed Rule

There are no changes to the regulatory text from the proposed rule, except for a minor and non-substantive grammatical correction to 50 CFR 660.1(a), changing the word "of" to "by," when referring to fishing activity by vessels of the United States.

Classification

The Administrator, West Coast Region, NMFS, determined that the FMP amendments implementing CEBA 1 are necessary for conservation and management of West Coast fisheries, and that they are consistent with the Magnuson-Stevens Fishery Conservation and Management Act and other applicable laws.

This final rule has been determined to be not significant for purposes of Executive Order 12866.

A final regulatory flexibility analysis (FRFA) was prepared pursuant to 5 U.S.C. 604(a), and incorporates the Initial Regulatory Flexibility Analysis (IRFA), and NMFS's responses to comments received on the IRFA, if any. NMFS did not receive any comments from the public on the IRFA for this action. The preamble to the proposed rule for this action included a detailed summary of the analyses contained in IRFA, and that discussion is not repeated here.

Final Regulatory Flexibility Analysis

A Statement of the Need for, and Objectives of, the Rule

This rule prohibits new directed commercial fishing in Federal waters on unmanaged, unfished forage fish species until the Council has had an adequate opportunity to both assess the scientific information relating to any proposed directed fishery and consider potential impacts to existing fisheries, fishing communities, and the greater marine ecosystem. This action is needed to proactively protect unmanaged, unfished forage fish of the U.S. West Coast EEZ in recognition of the importance of these forage fish to the species managed under the Council's FMPs and to the larger CCE. This action is not intended to supersede tribal or state fishery management for these species, and coordination would still occur through the existing Council process. CEBA 1 brings new ecosystem component species into each of the Council's four FMPs through amendments to those FMPs, and protects those species by prohibiting the future development of new directed commercial fisheries for Shared EC Species within the U.S. West Coast EEZ. No existing fisheries will be eliminated by this action. Under this rulemaking, existing levels of incidental catch of Shared EC Species in current fisheries will be allowed to continue into the future.

A Summary of Significant Issues Raised by the Public in Response to the Summary of the Agency's Assessment of Such Issues, and a Statement of Any Changes Made in the Final Rule as a Result

No public comments were received by NMFS in response to the IRFA or the economic analyses summarized in the IRFA, and no changes were required to be made as a result of the public comments. A summary of the comments received, and our responses, can be found above in the "Comments and Responses" section of this rule's preamble.

Response of the Agency to any Comments Filed by the Chief Counsel for Advocacy of the Small Business Administration in Response to the Proposed Rule

The Small Business Administration did not provide any comments on the proposed rule for this action.

Description and Estimate of Number of Small Entities To Which the Rule Will Apply

This rule will have no direct impact on any small entities.

A Description of the Projected Reporting, Recordkeeping and Other Compliance Requirements of the Rule

This action does not contain any Federal reporting, record keeping, or any other compliance requirements for either small or large entities.

A Description of the Steps the Agency Has Taken To Minimize the Significant Economic Impact on Small Entities Consistent With the Stated Objectives of Applicable Statutes

Alternative 2, the selected alternative for this rule, accomplishes the stated objectives of applicable statutes without any significant economic impact on small entities. Alternative 1, the no-action alternative, also would not have had any direct economic impact on small entities, but did not accomplish the state objectives of applicable statutes. Alternative 3 was expected to have moderate, indirect and negative effects on coastal pelagic species, shrimp, bottom trawl, and whiting fisheries and fishery management practices and was thus rejected in favor of the selected alternative in order to minimize economic impact on small entities consistent with the stated objectives of applicable statutes. A copy of this analysis is available from NMFS (see **ADDRESSES**). Copies of the Small Entity Compliance Guide prepared for this final rule are available on the West Coast Region's Web site at *http://www.westcoast.fisheries.noaa.gov/*.

This final rule was developed after meaningful collaboration, through the Council process, with the tribal representative on the Council. NMFS is not aware of any Treaty Indian tribe or subsistence fisheries in the EEZ other than those listed in 50 CFR 600.725(v). This action does not supersede or otherwise affect exemptions that exist for Treaty Indian fisheries.

List of Subjects in 50 CFR Part 660

Administrative practice and procedure, Fisheries, Fishing.

Dated: March 29, 2016.

Samuel D. Rauch III,

Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 660 is amended as follows:

PART 660—FISHERIES OFF WEST COAST STATES

■ 1. The authority citation for part 660 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*, 16 U.S.C. 773 *et seq.*, and 16 U.S.C. 7001 *et seq.*

■ 2. In § 660.1 revise paragraph (a) to read as follows:

§ 660.1 Purpose and scope.

(a) The regulations in this part govern fishing activity by vessels of the United States that fish or support fishing inside the outer boundary of the EEZ off the states of Washington, Oregon, and California.

* * * * *

■ 3. Add subpart B to read as follows:

Subpart B—All West Coast EEZ Fisheries

Sec.
660.5 Shared Ecosystem Component Species.
660.6 Prohibitions.

§ 660.5 Shared Ecosystem Component Species.

(a) *General.* The FMPs implemented in this part 660 each contain ecosystem component species specific to each FMP, as well as a group of ecosystem component species shared between all of the FMPs. Ecosystem component species shared between all of the Pacific Fishery Management Council's FMPs, and known collectively as "Shared EC Species," are:

(1) Round herring (*Etrumeus teres*) and thread herring (*Ophisthonema libertate* and *O. medirastre*).

(2) Mesopelagic fishes of the families *Myctophidae, Bathylagidae, Paralepididae,* and *Gonostomatidae*.

(3) Pacific sand lance (*Ammodytes hexapterus*).

(4) Pacific saury (*Cololabis saira*).

(5) Silversides (family *Atherinopsidae*).

(6) Smelts of the family *Osmeridae*.

(7) Pelagic squids (families: *Cranchiidae, Gonatidae, Histioteuthidae, Octopoteuthidae, Ommastrephidae* except Humboldt

squid [*Dosidicus gigas,*] *Onychoteuthidae,* and *Thysanoteuthidae*).

(b) *Directed commercial fishing for Shared EC Species.* For the purposes of this section, "directed commercial fishing" means that a fishing vessel lands Shared EC Species without landing any species other than Shared EC Species, or lands Shared EC Species with other species and in amounts more than:

(1) 10 mt combined weight of all Shared EC Species from any fishing trip; or

(2) 30 mt combined weight of all Shared EC Species in any calendar year.

§ 660.6 Prohibitions.

In addition to the general prohibitions specified in § 600.725 of this chapter, and the other prohibitions specified in this part, it is unlawful for any person to:

(a) *Directed commercial fishing.* Engage in directed commercial fishing for Shared EC Species from a vessel engaged in commercial fishing within the EEZ off Washington, Oregon, or California. This prohibition does not apply to:

(1) Fishing authorized by the Hoh, Makah, or Quileute Indian Tribes, or by the Quinault Indian Nation, or

(2) Fishing trips conducted entirely within state marine waters.

(b) *At-sea processing.* At-sea processing of Shared EC Species is prohibited within the EEZ, except while processing groundfish in accordance with subpart D of this part.

■ 4. In § 660.112, add paragraphs (d)(16) and (e)(10) to read as follows:

§ 660.112 Trawl fishery—prohibitions.

* * * * *

(d) * * *

(16) Retain and process more than 1 mt of Shared EC Species other than squid species in any calendar year; or, retain and process more than 40 mt of any Shared EC squid species in any calendar year.

(e) * * *

(10) Retain and process more than 1 mt of Shared EC Species other than squid species in any calendar year; or, retain and process more than 40 mt of any Shared EC squid species in any calendar year.

[FR Doc. 2016–07516 Filed 4–1–16; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 150916863–6211–02]

RIN 0648–XE551

Fisheries of the Exclusive Economic Zone Off Alaska; Northern Rockfish in the Bering Sea and Aleutian Islands Management Area.

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Temporary rule; modification of closure.

SUMMARY: NMFS is opening directed fishing for northern rockfish in the Bering Sea and Aleutian Islands Management Area (BSAI). This action is necessary to fully use the 2016 total allowable catch (TAC) of northern rockfish in the BSAI.

DATES: Effective 1200 hrs, Alaska local time (A.l.t.), March 30, 2016, through 2400 hrs, A.l.t., December 31, 2016. Comments must be received at the following address no later than 4:30 p.m., A.l.t., April 19, 2016.

ADDRESSES: You may submit comments on this document, identified by *NOAA–NMFS–2015–0118,* by any of the following methods:

- *Electronic Submission:* Submit all electronic public comments via the Federal e-Rulemaking Portal. Go to: *https://www.regulations.gov/#!docketDetail;D=NOAA-NMFS-2015-0118,* click the "Comment Now!" icon, complete the required fields, and enter or attach your comments.
- *Mail:* Submit written comments to Glenn Merrill, Assistant Regional Administrator, Sustainable Fisheries Division, Alaska Region NMFS, Attn: Ellen Sebastian. Mail comments to P.O. Box 21668, Juneau, AK 99802–1668.

Instructions: Comments sent by any other method, to any other address or individual, or received after the end of the comment period, may not be considered by NMFS. All comments received are a part of the public record and will generally be posted for public viewing on *www.regulations.gov* without change. All personal identifying information (*e.g.,* name, address), confidential business information, or otherwise sensitive information submitted voluntarily by the sender will be publicly accessible. NMFS will accept anonymous comments (enter "N/A" in the required fields if you wish to remain anonymous).

FOR FURTHER INFORMATION CONTACT: Steve Whitney, 907–586–7228.

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fishery in the BSAI according to the Fishery Management Plan for Groundfish of the Bering Sea and Aleutian Islands Management Area (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Regulations governing fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR part 600 and 50 CFR part 679.

Pursuant to the final 2016 and 2017 harvest specifications for groundfish in the BSAI (81 FR 14773, March 18, 2016), NMFS closed the directed fishery for northern rockfish under § 679.20(d)(1)(iii).

As of March 28, 2016, NMFS has determined that approximately 3,200 metric tons of northern rockfish initial TAC remains unharvested in the BSAI. Therefore, in accordance with § 679.25(a)(1)(i), (a)(2)(i)(C), and (a)(2)(iii)(D), and to fully utilize the 2016 TAC of northern rockfish in the BSAI, NMFS is terminating the previous closure and is opening directed fishing for northern rockfish in the BSAI. This will enhance the socioeconomic well-being of harvesters in this area. The Administrator, Alaska Region (Regional Administrator) considered the following factors in reaching this decision: (1) The current catch of northern rockfish in the BSAI and, (2) the harvest capacity and stated intent on future harvesting patterns of vessels in participating in this fishery.

Classification

This action responds to the best available information recently obtained from the fishery. The Assistant Administrator for Fisheries, NOAA (AA), finds good cause to waive the requirement to provide prior notice and opportunity for public comment pursuant to the authority set forth at 5 U.S.C. 553(b)(B) and § 679.25(c)(1)(ii) as such requirement is impracticable and contrary to the public interest. This requirement is impracticable and contrary to the public interest as it would prevent NMFS from responding to the most recent fisheries data in a timely fashion and would delay the opening of northern rockfish in the BSAI. NMFS was unable to publish a notice providing time for public comment because the most recent, relevant data only became available as of March 28, 2016.

The AA also finds good cause to waive the 30-day delay in the effective date of this action under 5 U.S.C. 553(d)(3). This finding is based upon the reasons provided above for waiver of prior notice and opportunity for public comment.

Without this inseason adjustment, NMFS could not allow the fishery for northern rockfish in the BSAI to be harvested in an expedient manner and in accordance with the regulatory schedule. Under § 679.25(c)(2), interested persons are invited to submit written comments on this action to the above address until April 19, 2016.

This action is required by §§ 679.20 and 679.25 and is exempt from review under Executive Order 12866.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: March 30, 2016.

Emily H. Menashes,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 2016–07613 Filed 3–30–16; 4:15 pm]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 150818742–6210–02]

RIN 0648–XE556

Fisheries of the Exclusive Economic Zone Off Alaska; Pacific Cod by Vessels Using Pot Gear in the Central Regulatory Area of the Gulf of Alaska

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Temporary rule; closure.

SUMMARY: NMFS is prohibiting directed fishing for Pacific cod by vessels using pot gear in the Central Regulatory Area of the Gulf of Alaska (GOA). This action is necessary to prevent exceeding the A season allowance of the 2016 Pacific cod total allowable catch apportioned to vessels using pot gear in the Central Regulatory Area of the GOA.

DATES: Effective 1200 hours, Alaska local time (A.l.t.), March 31, 2016, through 1200 hours, A.l.t., June 10, 2016.

FOR FURTHER INFORMATION CONTACT: Josh Keaton, 907–586–7228.

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fishery in the GOA exclusive economic zone according to the Fishery Management Plan for Groundfish of the Gulf of Alaska (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Regulations governing fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR part 600 and 50 CFR part 679. Regulations governing sideboard protections for GOA groundfish fisheries appear at subpart B of 50 CFR part 680.

The A season allowance of the 2016 Pacific cod total allowable catch (TAC) apportioned to vessels using pot gear in the Central Regulatory Area of the GOA is 8,028 metric tons (mt), as established by the final 2016 and 2017 harvest specifications for groundfish of the GOA (81 FR 14740, March 18, 2016) and reallocation (81 FR 15650, March 24, 2016).

In accordance with § 679.20(d)(1)(i), the Administrator, Alaska Region, NMFS (Regional Administrator) has determined that the A season allowance of the 2016 Pacific cod TAC apportioned to vessels using pot gear in the Central Regulatory Area of the GOA will soon be reached. Therefore, the Regional Administrator is establishing a directed fishing allowance of 8,018 mt and is setting aside the remaining 10 mt as bycatch to support other anticipated groundfish fisheries. In accordance with § 679.20(d)(1)(iii), the Regional Administrator finds that this directed fishing allowance has been reached. Consequently, NMFS is prohibiting directed fishing for Pacific cod by vessels using pot gear in the Central Regulatory Area of the GOA. After the effective date of this closure the maximum retainable amounts at § 679.20(e) and (f) apply at any time during a trip.

Classification

This action responds to the best available information recently obtained from the fishery. The Assistant Administrator for Fisheries, NOAA (AA), finds good cause to waive the requirement to provide prior notice and opportunity for public comment pursuant to the authority set forth at 5 U.S.C. 553(b)(B) as such requirement is impracticable and contrary to the public interest. This requirement is impracticable and contrary to the public interest as it would prevent NMFS from responding to the most recent fisheries data in a timely fashion and would delay the directed fishing closure of Pacific cod for vessels using pot gear in the Central Regulatory Area of the GOA. NMFS was unable to publish a notice providing time for public comment because the most recent, relevant data only became available as of March 29, 2016.

The AA also finds good cause to waive the 30-day delay in the effective date of this action under 5 U.S.C. 553(d)(3). This finding is based upon the reasons provided above for waiver of prior notice and opportunity for public comment.

This action is required by § 679.20 and is exempt from review under Executive Order 12866.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: March 30, 2016.

Emily H. Menashes,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 2016–07599 Filed 3–30–16; 4:15 pm]

BILLING CODE 3510–22–P

Proposed Rules

Federal Register
Vol. 81, No. 64
Monday, April 4, 2016

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 319

[Docket No. APHIS–2015–0015]

RIN 0579–AE13

Importation of Fresh Cherimoya Fruit From Chile Into the United States

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Proposed rule.

SUMMARY: We are proposing to amend the regulations to allow the importation of fresh cherimoya fruit from Chile into the continental United States, provided that fruit is produced in accordance with a systems approach, as an alternative to the currently required treatment. Commercial consignments of fresh cherimoya fruit are currently authorized entry into all ports of the United States from Chile subject to a mandatory soapy water and wax treatment. The proposed systems approach would include requirements for production site registration, low pest prevalence area certification, post-harvest processing, and fruit cutting and inspection at the packinghouse. The fruit would also be required to be imported in commercial consignments and accompanied by a phytosanitary certificate issued by the national plant protection organization of Chile with an additional declaration stating that the consignment was produced in accordance with the regulations. Fresh cherimoya fruit that does not meet the conditions of the systems approach would continue to be allowed to be imported into the United States subject to treatment. This action would allow for the importation of fresh cherimoya fruit from Chile while continuing to provide protection against the introduction of plant pests into the continental United States.

DATES: We will consider all comments that we receive on or before June 3, 2016.

ADDRESSES: You may submit comments by either of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov/#!docketDetail;D=APHIS-2015-0015.*
- *Postal Mail/Commercial Delivery:* Send your comment to Docket No. APHIS–2015–0015, Regulatory Analysis and Development, PPD, APHIS, Station 3A–03.8, 4700 River Road Unit 118, Riverdale, MD 20737–1238.

Supporting documents and any comments we receive on this docket may be viewed at *http://www.regulations.gov/#!docketDetail;D=APHIS-2015-0015* or in our reading room, which is located in room 1141 of the USDA South Building, 14th Street and Independence Avenue SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 799–7039 before coming.

FOR FURTHER INFORMATION CONTACT: Ms. Claudia Ferguson, Senior Regulatory Policy Specialist, Regulatory Coordination and Compliance, Imports, Regulations, and Manuals, PPQ, APHIS, 4700 River Road Unit 133, Riverdale, MD 20737–1231; (301) 851–2352.

SUPPLEMENTARY INFORMATION:

Background

Under the regulations in "Subpart—Fruits and Vegetables" (7 CFR 319.56–1 through 319.56–74, referred to below as the regulations or the fruits and vegetables regulations), the Animal and Plant Health Inspection Service (APHIS) of the United States Department of Agriculture (USDA) prohibits or restricts the importation of fruits and vegetables into the United States from certain parts of the world to prevent plant pests from being introduced into and spread within the United States.

Pursuant to 7 CFR 319.56–4(a), fresh cherimoya (*Annona cherimola*) fruit from Chile may be imported into the United States provided the shipment has undergone a soapy water and wax treatment in accordance with the Plant Protection and Quarantine (PPQ) Treatment Manual to mitigate against infestation by the false red mite (*Brevipalpus chilensis*), and is accompanied by a permit and subjected to inspection and shipping procedures.

The national plant protection organization (NPPO) of Chile has requested that APHIS amend the regulations in order to allow fresh cherimoya fruit that has been produced in accordance with an approved systems approach to be imported into the continental United States as an alternative option to the currently approved treatment.

As part of our evaluation of Chile's request, we prepared a pest risk assessment (PRA), "Importation of Fresh Cherimoya (*Annona cherimola* Mill.) Fruit from Chile into the Continental United States, A Qualitative, Pathway-Initiated Pest Risk Assessment" (May 2013), which evaluated the risk of permitting the importation of fresh cherimoya fruit from Chile into the continental United States.

The PRA identifies the false red mite as the one quarantine pest that could be introduced into the United States in consignments of fresh cherimoya fruit from Chile. A quarantine pest is defined in § 319.56–2 as "a pest of potential economic importance to the area endangered thereby and not yet present there, or present but not widely distributed and being officially controlled." In the PRA, the likelihood and consequences of introducing this pest to the United States are considered, and the false red mite is rated as having a medium pest risk potential. Pests receiving a rating within the medium range may necessitate specific phytosanitary measures in addition to standard port-of-entry inspection of the commodity being imported into the continental United States.

We also prepared a commodity import evaluation document (CIED) to determine what phytosanitary measures should be applied to mitigate the pest risk associated with the importation of fresh cherimoya fruit from Chile into the continental United States. Copies of the PRA and CIED may be obtained from the person listed under **FOR FURTHER INFORMATION CONTACT** or viewed on the Regulations.gov Web site (see **ADDRESSES** above for a link to Regulations.gov and information on the location and hours of the reading room).

In the CIED, entitled, "Importation of Fresh Cherimoya (*Annona cherimola* Mill.) Fruit from Chile into the Continental United States using a systems approach," (December 2014), we determined that phytosanitary measures could be applied as a systems approach to mitigate the risks of introducing or disseminating the false red mite into the continental United States. Therefore, we are proposing to allow the importation of fresh cherimoya fruit from Chile into the continental United States if it is produced under a systems approach, which is described below. Alternatively, fresh cherimoya fruit that do not meet the conditions of the systems approach would still be allowed to be imported into the United States if the fruit is treated in Chile in accordance with the current requirements of the PPQ Treatment Manual. The fruit would also have to be imported in commercial consignments only and accompanied by documentation to validate foreign site preclearance inspection after the required treatment is completed.

Based on the findings of the CIED and the PRA, we are proposing to add the systems approach to the regulations in a new § 319.56–75.

Commercial Consignments

Only commercial consignments of fresh cherimoya fruit from Chile would be allowed to be imported into the continental United States. Produce grown commercially is less likely to be infested with plant pests than noncommercial consignments. Noncommercial consignments are more prone to infestations because the commodity is often ripe to overripe, could be of a variety with unknown susceptibility to pests, and is often grown with little or no pest control. Commercial consignments, as defined in § 319.56–2, are consignments that an inspector identifies as having been imported for sale and distribution. Such identification is based on a variety of indicators, including, but not limited to: Quantity of produce, type of packing, identification of grower or packinghouse on the packaging, and documents consigning the fruits or vegetables to a wholesaler or retailer.

Production Site Registration

Under this proposed rule, the production site where the fruit is grown would be required to be registered with the NPPO of Chile. The official registration number of the production site would be marked on all field cartons and containers of harvested fresh cherimoya fruit. Production sites would be required to renew their registration annually.

Registration of production sites with the NPPO of Chile and marking of field cartons or containers with the registration numbers would allow traceback to the production site if pest problems were found on fruit shipped to the United States. Problem production sites could then be suspended until further mitigation measures were taken to address the pest populations.

Low-Prevalence Production Site Certification

Between 1 and 30 days prior to harvest, random samples of leaves would have to be collected from each registered production site under the direction of the NPPO of Chile. These samples would have to undergo a pest detection and evaluation method as follows: The leaves would have to be washed using a flushing method, placed in a 20-mesh sieve on top of a 200-mesh sieve, sprinkled with a liquid soap and water solution, washed with water at high pressure, and washed with water at low pressure. The process would then be repeated. The contents of the 200-mesh sieve would then be placed on a petri dish and analyzed for the presence of live false red mites. If a single live false red mite were found, the production site would not qualify for certification as a low-prevalence production site and would only be eligible to export fruit to the continental United States if the fruit is subsequently treated with an APHIS-approved quarantine treatment in Chile. Each production site would have only one opportunity per season to qualify as a low-prevalence production site, and certification of low prevalence would be valid for one harvest season only. The NPPO of Chile would be required to present a list of certified production sites to APHIS.

Production site low-prevalence certification would identify problem production sites and prevent the shipment of fruit with false red mites from such sites. This mite sampling method has been tested in Chile and found to be successful in identifying grape, citrus, baby kiwi, and pomegranate production areas with high and low populations of mites.

Post-Harvest Processing

After harvest, all damaged or diseased fruits would have to be culled at the packinghouse, and the remaining fruit would have to be packed into new, clean boxes, crates, or other APHIS-approved packing containers.

Post-harvest processing procedures, such as culling damaged fruit and sampling for mites, would remove fruit that could contain pests from consignments being shipped to the United States. Culling is a standard procedure to remove fruit that may contain pests or otherwise be of poor quality.

Phytosanitary Inspection

The fruit would have to be inspected in Chile at an APHIS-approved inspection site under the direction of APHIS inspectors in coordination with the NPPO of Chile following any post-harvest processing. In order to be eligible for shipment to the continental United States, the fruit in the consignment would have to pass inspection by meeting the following requirements:

- Fruit presented for inspection would have to be identified in the shipping documents accompanying each lot of fruit to specify the production site(s) where the fruit was produced and the packing shed(s) where the fruit was processed. This identification would have to be maintained until the fruit is released for entry into the United States.
- A biometric sample would have to be drawn from each consignment and examined for false red mite. If a single live false red mite were found during the inspection process, the certified low-prevalence production site where the fruit was grown would lose its certification for the remainder of the harvest season. Rejected consignments of fruit would still be eligible for export to all ports of the United States only after application of an APHIS-approved quarantine treatment in Chile as long as the fruit is imported in commercial consignments only and accompanied by documentation to validate foreign site preclearance inspection after the required treatment is completed.

The proposed requirements for the identification in shipping documents of the fresh cherimoya fruit to their production sites and packing sheds would aid in traceback if pests were discovered. The proposed requirements for visual inspection and biometric sampling of the fruit would provide additional layers of protection against the possibility of fresh cherimoya fruit infested with quarantine pests being shipped from Chile to the United States. These methods have proved effective when employed to inspect consignments of citrus, baby kiwi, and pomegranates from Chile.

Phytosanitary Certificate

Each consignment of fruit would have to be accompanied by a phytosanitary certificate issued by the NPPO of Chile that contains an additional declaration stating that the fruit in the consignment was inspected and found free of false red mite based on field and packinghouse inspections and was grown, packed, and shipped in accordance with the requirements of the regulations.

Requiring a phytosanitary certificate would ensure that the NPPO of Chile has inspected the fruit and certified that the fruit meets the conditions in the section for export to the United States.

Executive Order 12866 and Regulatory Flexibility Act

This proposed rule has been determined to be not significant for the purposes of Executive Order 12866 and, therefore, has not been reviewed by the Office of Management and Budget.

In accordance with the Regulatory Flexibility Act, we have analyzed the potential economic effects of this action on small entities. The analysis is summarized below. Copies of the full analysis are available by contacting the person listed under **FOR FURTHER INFORMATION CONTACT** or on the Regulations.gov Web site (see **ADDRESSES** above for instructions for accessing Regulations.gov).

APHIS is proposing to allow the importation of fresh cherimoya fruit from Chile into the continental United States under a systems approach, in response to a January 2013 request from Chile's NPPO. This proposed rule provides the public with the opportunity to comment on APHIS' PRA and CIED that are the basis for this action. Currently, commercial consignments of fresh cherimoya are allowed into all of the United States subject to mandatory soapy water and wax treatment for *Brevipalpus chilensis*.

Over 80 percent of Chile's cherimoya exports are to the United States. APHIS welcomes information regarding cherimoya production within the United States. Regardless of the number of U.S. producers or their size, any impact of this proposed rule would be minor because the volume of cherimoya imported from Chile is not expected to change significantly.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action would not have a significant economic impact on a substantial number of small entities.

Executive Order 12988

This proposed rule would allow fresh cherimoya fruit to be imported into the continental United States from Chile under a systems approach. If this proposed rule is adopted, State and local laws and regulations regarding fresh cherimoya fruit imported under this rule would be preempted while the fruit is in foreign commerce. Fresh fruits are generally imported for immediate distribution and sale to the consuming public and would remain in foreign commerce until sold to the ultimate consumer. The question of when foreign commerce ceases in other cases must be addressed on a case-by-case basis. If this proposed rule is adopted, no retroactive effect will be given to this rule, and this rule will not require administrative proceedings before parties may file suit in court challenging this rule.

Paperwork Reduction Act

In accordance with section 3507(d) of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the information collection or recordkeeping requirements included in this proposed rule have been submitted for approval to the Office of Management and Budget (OMB). Please send written comments to the Office of Information and Regulatory Affairs, OMB, Attention: Desk Officer for APHIS, Washington, DC 20503. Please state that your comments refer to Docket No. APHIS–2015–0015. Please send a copy of your comments to: (1) APHIS, using one of the methods described under **ADDRESSES** at the beginning of this document, and (2) Clearance Officer, OCIO, USDA, room 404–W, 14th Street and Independence Avenue SW., Washington, DC 20250.

We are proposing to amend the regulations to allow the importation of fresh cherimoya fruit from Chile into the continental United States, provided that fruit is produced in accordance with a systems approach, as an alternative to the currently required treatment. Commercial consignments of fresh cherimoya fruit are currently authorized entry into all ports of the United States from Chile subject to a mandatory soapy water and wax treatment.

The proposed systems approach would include requirements for production site registration, low pest prevalence area certification, post-harvest processing, and fruit cutting and inspection at the packinghouse. The fruit would also be required to be imported in commercial consignments and accompanied by a phytosanitary certificate issued by the NPPO of Chile with an additional declaration stating that the consignment was produced in accordance with the regulations. Fresh cherimoya fruit that does not meet the conditions of the systems approach would continue to be allowed to be imported into the United States subject to treatment. This action would allow for the importation of fresh cherimoya fruit from Chile while continuing to provide protection against the introduction of plant pests into the continental United States.

Implementing this rule will require pre-clearance documentation, production site registration with low-prevalence level certification option, inspections, box markings, and phytosanitary certificates.

We are soliciting comments from the public (as well as affected agencies) concerning our proposed information collection and recordkeeping requirements. These comments will help us:

(1) Evaluate whether the proposed information collection is necessary for the proper performance of our agency's functions, including whether the information will have practical utility;

(2) Evaluate the accuracy of our estimate of the burden of the proposed information collection, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the information collection on those who are to respond (such as through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology; *e.g.*, permitting electronic submission of responses).

Estimate of burden: Public reporting burden for this collection of information is estimated to average 0.12407 hours per response.

Respondents: Producers and importers of fresh cherimoya fruit and the NPPO of Chile.

Estimated annual number of respondents: 16.

Estimated annual number of responses per respondent: 202.5.

Estimated annual number of responses: 3,240.

Estimated total annual burden on respondents: 402 hours. (Due to averaging, the total annual burden hours may not equal the product of the annual number of responses multiplied by the reporting burden per response.)

Copies of this information collection can be obtained from Ms. Kimberly Hardy, APHIS' Information Collection Coordinator, at (301) 851–2727.

E-Government Act Compliance

The Animal and Plant Health Inspection Service is committed to compliance with the EGovernment Act to promote the use of the Internet and other information technologies, to provide increased opportunities for citizen access to Government information and services, and for other purposes. For information pertinent to E-Government Act compliance related to this proposed rule, please contact Ms.

Kimberly Hardy, APHIS' Information Collection Coordinator, at (301) 851–2727.

List of Subjects in 7 CFR Part 319

Coffee, Cotton, Fruits, Imports, Logs, Nursery stock, Plant diseases and pests, Quarantine, Reporting and recordkeeping requirements, Rice, Vegetables.

Accordingly, we propose to amend 7 CFR part 319 as follows:

PART 319—FOREIGN QUARANTINE NOTICES

■ 1. The authority citation for part 319 continues to read as follows:

Authority: 7 U.S.C. 450, 7701–7772, and 7781–7786; 21 U.S.C. 136 and 136a; 7 CFR 2.22, 2.80, and 371.3.

■ 2. Section 319.56–75 is added to subpart Fruits and Vegetables to read as follows:

§ 319.56–75 Fresh cherimoya from Chile.

Fresh cherimoya (*Annona cherimola*) fruit must be imported into the United States under the conditions listed in paragraphs (a) and (b)(1) of this section. Fresh cherimoya fruit may also be imported into the continental United States from Chile under the conditions listed in paragraph (b)(2) of this section.

(a) *Commercial consignments.* The fresh cherimoya fruit may be imported in commercial consignments only.

(b) The risks presented by *Brevipalpus chilensis* mites must be addressed in one of the following ways:

(1) The fresh cherimoya fruit are subject to treatment and certification consisting of:

(i) A soapy water and wax treatment.

(ii) Each consignment of fresh cherimoya fruit must be accompanied by documentation to validate foreign site preclearance inspection after soapy water and wax treatment completed in Chile; or

(2) The fresh cherimoya fruit are subject to a systems approach consisting of the following:

(i) *Production site registration.* The production site where the fruit is grown must be registered with the national plant protection organization (NPPO) of Chile. Harvested cherimoya must be placed in field cartons or containers that are marked to show the official registration number of the production site. Registration must be renewed annually.

(ii) *Low-prevalence production site certification.* The fruit must originate from a low-prevalence production site to be imported under the conditions in this section. Between 1 and 30 days prior to harvest, random samples of leaves must be collected from each registered production site under the direction of the NPPO of Chile. These samples must undergo a pest detection and evaluation method as follows: The leaves must be washed using a flushing method, placed in a 20-mesh sieve on top of a 200-mesh sieve, sprinkled with a liquid soap and water solution, washed with water at high pressure, and washed with water at low pressure. The process must then be repeated. The contents of the 200-mesh sieve must then be placed on a petri dish and analyzed for the presence of live *B. chilensis* mites. If a single live *B. chilensis* mite is found, the production site will not qualify for certification as a low-prevalence production site. Each production site may have only one opportunity per season to qualify as a low-prevalence production site, and certification of low prevalence will be valid for one harvest season only. The NPPO of Chile will present a list of certified production sites to APHIS. Fruit from those production sites that do not meet the requirements for certification as low-prevalence production sites may still be imported into the continental United States subject to treatment as listed in paragraph (b)(1) of this section.

(iii) *Post-harvest processing.* After harvest, all damaged or diseased fruits must be culled at the packinghouse and remaining fruit must be packed into new, clean boxes, crates, or other APHIS-approved packing containers.

(iv) *Phytosanitary inspection.* Fruit must be inspected in Chile at an APHIS-approved inspection site under the direction of APHIS inspectors in coordination with the NPPO of Chile following any post-harvest processing. A biometric sample must be drawn and examined from each consignment. Fresh cherimoya fruit can be shipped to the continental United States under the conditions of this section only if the consignment passes inspection. Any consignment that does not meet the requirements for inspection can still be imported into the continental United States subject to treatment as listed in paragraph (b)(1) of this section. Inspection procedures are as follows:

(A) Fruit presented for inspection must be identified in the shipping documents accompanying each lot of fruit to specify the production site or sites in which the fruit was produced and the packing shed or sheds in which the fruit was processed. This identification must be maintained until the fruit is released for entry into the United States.

(B) A biometric sample of the boxes, crates, or other APHIS-approved packing containers from each consignment will be selected by the NPPO of Chile, and the fruit from these boxes, crates, or other APHIS-approved packing containers will be visually inspected for quarantine pests. If a single live *B. chilensis* mite is found during the inspection process, the certified low-prevalence production site where the fruit was grown will lose its certification for the remainder of the harvest season.

(v) *Phytosanitary certificate.* Each consignment of fresh cherimoya fruit must be accompanied by a phytosanitary certificate issued by the NPPO of Chile that contains an additional declaration stating that the fruit in the consignment was inspected and found free of *Brevipalpus chilensis* and was grown, packed, and shipped in accordance with the requirements of § 319.56–75(b)(2).

Done in Washington, DC, this 29th day of March 2016.

Kevin Shea,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 2016–07653 Filed 4–1–16; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 319

[Docket No. APHIS–2015–0051]

RIN 0579–AE20

Importation of Lemons From Chile Into the Continental United States

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Proposed rule.

SUMMARY: We are proposing to amend the fruits and vegetables regulations to list lemon (*Citrus limon* (L.) Burm. f.) from Chile as eligible for importation into the continental United States subject to a systems approach. Under this systems approach, the fruit would have to be grown in a place of production that is registered with the Government of Chile and certified as having a low prevalence of *Brevipalpus chilensis.* The fruit would have to undergo pre-harvest sampling at the registered production site. Following post-harvest processing, the fruit would have to be inspected in Chile at an approved inspection site. Each consignment of fruit would have to be accompanied by a phytosanitary certificate with an additional

declaration stating that the fruit had been found free of *Brevipalpus chilensis* based on field and packinghouse inspections. This proposed rule would allow for the safe importation of lemons from Chile using mitigation measures other than fumigation with methyl bromide.

DATES: We will consider all comments that we receive on or before June 3, 2016.

ADDRESSES: You may submit comments by either of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov/#!docketDetail;D=APHIS-2015-0051.*
- *Postal Mail/Commercial Delivery:* Send your comment to Docket No. APHIS–2015–0051, Regulatory Analysis and Development, PPD, APHIS, Station 3A–03.8, 4700 River Road Unit 118, Riverdale, MD 20737–1238.

Supporting documents and any comments we receive on this docket may be viewed at *http://www.regulations.gov/#!docketDetail;D=APHIS-2015-0051* or in our reading room, which is located in Room 1141 of the USDA South Building, 14th Street and Independence Avenue SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 799–7039 before coming.

FOR FURTHER INFORMATION CONTACT: Mr. George Balady, Senior Regulatory Policy Specialist, Regulatory Coordination and Compliance, Plant Health Programs, PPQ, APHIS, 4700 River Road Unit 133, Riverdale, MD 20737; (301) 851–2240.

SUPPLEMENTARY INFORMATION:

Background

Under the regulations in "Subpart-Fruits and Vegetables" (7 CFR 319.56–1 through 319.56–74, referred to below as the regulations), the Animal and Plant Health Inspection Service (APHIS) of the U.S. Department of Agriculture prohibits or restricts the importation of fruits and vegetables into the United States from certain parts of the world to prevent plant pests from being introduced into and spread within the United States.

The regulations in § 319.56–4(a) provide that fruits and vegetables that can be imported using one or more of the designated phytosanitary measures in § 319.56–4(b) to mitigate risk will be listed, along with the applicable requirements for their importation, on the Internet (currently in the Fruits and Vegetables Import Requirements [FAVIR] database at *www.aphis.usda.gov/favir*). Under those provisions, lemons from Chile (*Citrus limon* (L.) Burm. f.) are currently listed in the FAVIR database as enterable subject to treatment with methyl bromide for the pest *Brevipalpus chilensis,* the Chilean false red mite, applied either as a condition of entry treatment or applied in Chile under an APHIS preclearance program.

The regulations in § 319.56–4(a) also provide that commodities that require phytosanitary measures other than those measures cited in § 319.56–4(b) may only be imported in accordance with applicable requirements in § 319.56–3 and commodity-specific requirements contained elsewhere in the subpart. Under those provisions, other citrus fruits, including clementines (*Citrus reticulata* Blanco var. Clementine), mandarins (*Citrus reticulata* Blanco), and tangerines (*Citrus reticulata* Blanco) may be imported into the United States from Chile, and grapefruit (*Citrus paradisi* Macfad.) and sweet oranges (*Citrus sinensis* (L.) Osbeck) may be imported into the continental United States from Chile under a systems approach. The conditions applicable to the importation of citrus from Chile are listed in § 319.56–38.

In this document, we are proposing to amend § 319.56–38 to include lemons that are currently enterable into the United States subject to treatment, thereby making the lemons eligible for importation under the same systems approach as other citrus from Chile.

Our review of the information supporting the safe importation into the United States of citrus from Chile under the listed phytosanitary measures is examined in a commodity import evaluation document (CIED) titled "Importation of Fresh Lemons (*Citrus limon* (L.) Burm. F.), from Chile into the Continental United States Using a Systems Approach." Copies of the CIED may be obtained from the person listed under **FOR FURTHER INFORMATION CONTACT** or viewed on the Regulations.gov Web site or in our reading room (see **ADDRESSES** above for a link to Regulations.gov and information on the location and hours of the reading room).

In June 2010, APHIS recognized all of Chile as a pest-free area with respect to *Ceratitis capitata,* the Mediterranean fruit fly. Therefore, the CIED identifies one quarantine pest that could be introduced into the United States in consignments of lemon from Chile: *B. chilensis.* A quarantine pest is defined in § 319.56–2 as "a pest of potential economic importance to the area endangered thereby and not yet present there, or present but not widely distributed and being officially controlled." In the CIED, the likelihood and consequences of introducing this pest to the United States are considered, and *B. chilensis* is rated as having a medium pest risk potential. Pests receiving a rating within the medium range may necessitate specific phytosanitary measures in addition to standard port-of-entry inspection of the commodity being imported into the United States.

Based on the findings of our CIED, we are proposing to allow the importation of fresh lemons from Chile into the United States subject to the same systems approach in place for other citrus from Chile. Under a systems approach, a set of phytosanitary conditions, at least two of which have an independent effect in mitigating the pest risk associated with the movement of commodities, is specified, whereby fruits and vegetables may be imported into the United States from countries that are not free of certain plant pests. The systems approach for lemons from Chile would require the fruit to be grown in a place of production that is registered with the national plant protection organization (NPPO) of Chile. The fruit would have to undergo pre-harvest sampling at the registered production site under the direction of the NPPO of Chile. The NPPO of Chile would present a list of production sites certified as having a low prevalence of *B. chilensis* to APHIS. Following post-harvest processing, the fruit would have to be inspected in Chile at an APHIS-approved inspection site under the direction of APHIS inspectors in coordination with the NPPO of Chile. Each consignment of the fruit would have to be accompanied by a phytosanitary certificate with an additional declaration stating that the lemons in the consignment meet the conditions of the systems approach and are free of *B. chilensis.* The mitigation measures in the proposed systems approach are discussed in greater detail below.

Production Site Registration

The production site where the lemons are grown would have to be registered with the NPPO of Chile. To register, the production site must provide the NPPO of Chile with the following information: Production site name, grower name, municipality, province, region, area planted to each species, number of plants/hectares/species, and approximate date of harvest. Registration would have to be renewed annually.

Registration of production sites is required to manage production site requirements and to control access to the program to only qualified sites. Commercially grown shipments from registered production sites use good agricultural practices to reduce or eliminate pests.

Low-Prevalence Production Site Certification

Between 1 and 30 days prior to harvest, random samples of fruit would have to be collected from each registered production site under the direction of the NPPO of Chile. These samples would have to undergo a pest detection and evaluation method as follows: The fruit would have to be washed using a flushing method, placed in a 20-mesh sieve on top of a 200-mesh sieve, sprinkled with a liquid soap and water solution, washed with water at high pressure, and washed with water at low pressure. The washing process would then be repeated immediately after the first washing. The contents of the 200-mesh sieve would then be placed on a petri dish and analyzed for the presence of live *B. chilensis* mites. If a single live *B. chilensis* mite is found, the production site would not qualify for certification as a low-prevalence production site and would be eligible to export fruit to the United States only if the fruit is fumigated with methyl bromide either in Chile or at the port of first arrival in the United States. Each production site would have only one opportunity per season to qualify as a low-prevalence production site, and certification of low prevalence would be valid for one harvest season only. The NPPO of Chile would be required to present a list of certified production sites to APHIS annually.

Post-Harvest Processing

After harvest and before packing, the fruit would have to be washed, rinsed in a potable water bath, washed with detergent with brushing using bristle rollers, rinsed with a hot water shower with brushing using bristle rollers, predried at room temperature, waxed, and dried with hot air. These mitigations aid in removing any pests from the fruit.

Phytosanitary Inspection

The fruit would have to be inspected in Chile at an APHIS-approved inspection site under the direction of APHIS inspectors in coordination with the NPPO of Chile following any post-harvest processing. A biometric sample would be drawn from each consignment, which may represent multiple grower lots from different packing sheds. Consignments with mites will be rejected from the systems approach. Rejected lots may still be exported to the United States but would require fumigation with methyl bromide either in Chile or at the port of first arrival in the United States in accordance with § 305.5 of the regulations.

Phytosanitary Certificate

Each consignment of fruit would have to be accompanied by a phytosanitary certificate issued by the NPPO of Chile that contains an additional declaration stating that the lemons in the consignment meet the conditions of the systems approach and are free of *B. chilensis*. Requiring a phytosanitary certificate ensures that the NPPO of Chile inspects the lemons for pests.

Executive Order 12866 and Regulatory Flexibility Act

This proposed rule has been determined to be not significant for the purposes of Executive Order 12866 and, therefore, has not been reviewed by the Office of Management and Budget.

In accordance with the Regulatory Flexibility Act, we have analyzed the potential economic effects of this action on small entities. The analysis is summarized below. Copies of the full analysis are available by contacting the person listed under **FOR FURTHER INFORMATION CONTACT** or on the Regulations.gov Web site (see **ADDRESSES** above for instructions for accessing Regulations.gov).

The Government of Chile submitted a market access request for lemon fruit to be approved for import into the continental United States using a systems approach as an alternative to methyl bromide fumigation, to mitigate the risk of introduction of the Chilean false red mite.

The United States is a net exporter of fresh lemon; over 5 seasons (2009/10–2013/14), annual exports averaged about 102,410 metric tons (MT) (19 percent of production), compared to annual imports that averaged about 46,270 MT. Based on the Small Business Administration small-entity standards, the majority of entities that comprise industries that may be affected by this rule are small. These entities include lemon producers, packers, wholesalers, retailers, and importers.

Chile supplies about one-third of U.S. fresh lemon imports. Chile's Ministry of Agriculture estimates that approximately 60 percent of their lemon consignments to the United States will switch from methyl bromide treatment to the systems approach. Chile currently exports about 15,000 MT per year to the United States, of which the systems approach is expected to be used for 8,500 to 9,000 MT. For this reason, the proposed rule is not expected to result in a significant increase in Chilean lemon exports to the United States or their competitiveness.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action would not have a significant economic impact on a substantial number of small entities.

Executive Order 12988

This proposed rule would allow lemon fruit to be imported into the continental United States from Chile. If this proposed rule is adopted, State and local laws and regulations regarding lemon fruit imported under this rule would be preempted while the fruit is in foreign commerce. Fresh fruits are generally imported for immediate distribution and sale to the consuming public and would remain in foreign commerce until sold to the ultimate consumer. The question of when foreign commerce ceases in other cases must be addressed on a case-by-case basis. If this proposed rule is adopted, no retroactive effect will be given to this rule, and this rule will not require administrative proceedings before parties may file suit in court challenging this rule.

Paperwork Reduction Act

In accordance with section 3507(d) of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the information collection or recordkeeping requirements included in this proposed rule have been submitted for approval to the Office of Management and Budget (OMB). Please send written comments to the Office of Information and Regulatory Affairs, OMB, Attention: Desk Officer for APHIS, Washington, DC 20503. Please state that your comments refer to Docket No. APHIS–2015–0051. Please send a copy of your comments to: (1) APHIS, using one of the methods described under **ADDRESSES** at the beginning of this document, and (2) Clearance Officer, OCIO, USDA, Room 404–W, 14th Street and Independence Avenue SW., Washington, DC 20250.

APHIS is proposing to amend the fruits and vegetables regulations to list lemon (*Citrus limon* (L.) Burm. f.) from Chile as eligible for importation into the continental United States subject to a systems approach. Under this systems approach, the fruit would have to be grown in a place of production that is registered with the Government of Chile and certified as having a low prevalence of *B. chilensis*. The fruit would have to undergo pre-harvest sampling at the registered production site. Following post-harvest processing, the fruit would have to be inspected in Chile at an approved inspection site. Each consignment of fruit would have to be accompanied by a phytosanitary certificate with an additional declaration stating that the fruit had been found free of *B. chilensis* based on field and packinghouse inspections. This proposed rule would allow for the safe importation of lemons from Chile using mitigation measures other than fumigation with methyl bromide.

Implementing this rule will require permits, production site registration with low-prevalence level certification option, phytosanitary inspections, phytosanitary certificates, and chemical treatment procedures.

We are soliciting comments from the public (as well as affected agencies) concerning our proposed information collection and recordkeeping requirements. These comments will help us:

(1) Evaluate whether the proposed information collection is necessary for the proper performance of our agency's functions, including whether the information will have practical utility;

(2) Evaluate the accuracy of our estimate of the burden of the proposed information collection, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the information collection on those who are to respond (such as through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology; *e.g.,* permitting electronic submission of responses).

Estimate of burden: Public reporting burden for this collection of information is estimated to average 0.6917 hours per response.

Respondents: Producers and importers of lemons, and the NPPO of Chile.

Estimated annual number of respondents: 198.

Estimated annual number of responses per respondent: 6.71.

Estimated annual number of responses: 1,330.

Estimated total annual burden on respondents: 920 hours. (Due to averaging, the total annual burden hours may not equal the product of the annual number of responses multiplied by the reporting burden per response.)

Copies of this information collection can be obtained from Ms. Kimberly Hardy, APHIS' Information Collection Coordinator, at (301) 851–2727.

E-Government Act Compliance

The Animal and Plant Health Inspection Service is committed to compliance with the E-Government Act to promote the use of the Internet and other information technologies, to provide increased opportunities for citizen access to Government information and services, and for other purposes. For information pertinent to E-Government Act compliance related to this proposed rule, please contact Ms. Kimberly Hardy, APHIS' Information Collection Coordinator, at (301) 851–2727.

List of Subjects in 7 CFR Part 319

Coffee, Cotton, Fruits, Imports, Logs, Nursery stock, Plant diseases and pests, Quarantine, Reporting and recordkeeping requirements, Rice, Vegetables.

Accordingly, we propose to amend 7 CFR part 319 as follows:

PART 319—FOREIGN QUARANTINE NOTICES

■ 1. The authority citation for part 319 continues to read as follows:

Authority: 7 U.S.C. 450, 7701–7772, and 7781–7786; 21 U.S.C. 136 and 136a; 7 CFR 2.22, 2.80, and 371.3.

§ 319.56–38 [Amended]

■ 2. Section 319.56–38 is amended as follows:

■ a. In the introductory text, by adding the words ", lemons (*Citrus limon* (L.) Burm. f.)," between the words "(*Citrus paradisi* Macfad.)" and "and sweet oranges".

■ b. In paragraph (e), by adding the word "lemons," between the words "grapefruit," and "mandarins,".

■ c. In paragraph (f), by adding the word "lemons," between the words "grapefruit," and "mandarins,".

Done in Washington, DC, this 29th day of March 2016.

Kevin Shea,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 2016–07673 Filed 4–1–16; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 56

[Docket No. FDA–2015–N–5052]

Administrative Actions for Noncompliance; Lesser Administrative Actions

AGENCY: Food and Drug Administration, HHS.

ACTION: Proposed rule.

SUMMARY: The Food and Drug Administration (FDA) is proposing to amend the regulation describing lesser administrative actions that may be imposed on an Institutional Review Board (IRB) that has failed to comply with FDA's IRB regulations. We are clarifying that FDA may require the IRB to withhold approval of new FDA-regulated studies, stop the enrollment of new subjects in ongoing studies, and terminate ongoing studies, or any combination of these actions, until the noncompliance with FDA's IRB regulations is corrected. We are taking this action to ensure clarity and improve the accuracy of the regulations.

DATES: Submit electronic or written comments on this proposed rule or its companion direct final rule by June 20, 2016.

ADDRESSES: You may submit comments as follows:

Electronic Submissions

Submit electronic comments in the following way:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to *http://www.regulations.gov* will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else's Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on *http://www.regulations.gov.*
- If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission and in the

manner detailed (see "Written/Paper Submissions" and "Instructions").

Written/Paper Submissions

Submit written/paper comments as follows:

- *Mail/Hand delivery/Courier (for written/paper submissions):* Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.
- For written/paper comments submitted to the Division of Dockets Management, FDA will post your comment, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in "Instructions."

Instructions: All submissions received must include the Docket No. FDA–2015–N–5052 for "Subpart E—Administrative Actions for Noncompliance; Lesser Administrative Actions." Received comments will be placed in the docket and, except for those submitted as "Confidential Submissions," publicly viewable at *http://www.regulations.gov* or at the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

- *Confidential Submissions*—To submit a comment with confidential information that you do not wish to be made publicly available, submit your comments only as a written/paper submission. You should submit two copies total. One copy will include the information you claim to be confidential with a heading or cover note that states "THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION". The Agency will review this copy, including the claimed confidential information, in its consideration of comments. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on *http://www.regulations.gov.* Submit both copies to the Division of Dockets Management. If you do not wish your name and contact information to be made publicly available, you can provide this information on the cover sheet and not in the body of your comments and you must identify this information as "confidential." Any information marked as "confidential" will not be disclosed except in accordance with 21 CFR 10.20 and other applicable disclosure law. For more information about FDA's posting of comments to public dockets, see 80 FR 56469, September 18, 2015, or access the information at: *http://www.fda.gov/regulatoryinformation/dockets/default.htm.*

Docket: For access to the docket to read background documents or the electronic and written/paper comments received, go to *http://www.regulations.gov* and insert the docket number, found in brackets in the heading of this document, into the "Search" box and follow the prompts and/or go to the Division of Dockets Management, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Sheila Brown, Office of Good Clinical Practice, Office of Special Medical Programs, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 32, Rm. 5129, Silver Spring, MD 20993–0002, 301–796–6563.

SUPPLEMENTARY INFORMATION:

I. Background

FDA is proposing to amend the text of § 56.120(b) (21 CFR 56.120(b)), which describes lesser administrative actions that the Agency may impose on an IRB until the IRB takes appropriate action to correct the IRB's noncompliance. FDA is proposing this revision to clarify the language and improve the accuracy of the regulations. Specifically, this proposed rule would propose to amend § 56.120(b) by clarifying that FDA has authority to require the IRB to withhold approval of new FDA-regulated studies conducted at the institution or reviewed by the IRB, direct that no new subjects be added to ongoing studies, and terminate ongoing studies provided that doing so would not endanger study subjects.

This amendment also proposes to renumber current paragraphs (b)(4) and (c) as paragraphs (c) and (d), respectively, and inserts "FDA may" into newly designated paragraph (c) so that it is a complete sentence.

FDA first proposed requirements for the composition and operations of institutional review committees in the "Proposed Investigational Device Exemptions," published in the **Federal Register** of August 20, 1976 (41 FR 35282; "Proposed IDE Rule"). In that document, FDA proposed disqualification procedures for institutional review committees and requested comments on the proposed procedures and other possible administrative actions that FDA might take against a committee that is not in compliance with the regulations (41 FR 35282 at 35293). FDA also stated its intention to publish uniform, Agency-wide regulations governing clinical investigations at a later date, including requirements governing institutional review committees (41 FR 35282 at 35283).

Subsequently, FDA published "Standards for Institutional Review Boards for Clinical Investigations" on August 8, 1978 (43 FR 35186; "Proposed IRB Standards"). Comments on implementing institutional review requirements received in response to the Proposed IDE Rule were reviewed and utilized in preparing the Proposed IRB Standards (43 FR 35186 at 35187). In the Proposed IRB Standards, FDA proposed that disqualification would be used only if the Commissioner of Food and Drugs finds that: (1) The IRB failed to comply with one or more of the standards for IRBs in part 56 or other supplemental requirements in the investigational new drugs or investigational device exemptions (IDE) regulations; (2) the noncompliance adversely affects the validity of the data or the rights or safety of the human subjects; and (3) other lesser regulatory actions (*e.g.,* warnings or rejection of data from individual clinical investigations) have not been or probably will not be adequate in achieving compliance (43 FR 35186 at 35195).

FDA received numerous comments to the Proposed IRB Standards, and addressed those comments in the **Federal Register** of January 27, 1981 (46 FR 8958), "Protection of Human Subjects: Standards for Institutional Review Boards for Clinical Investigations, Final Rule." Specifically, several comments suggested that any lesser regulatory actions should be listed (46 FR 8958 at 8973). FDA accepted these comments and revised § 56.120(b) to set forth the lesser administrative actions that the Agency may take if FDA finds deficiencies in the operation of an IRB and to describe the circumstances in which these lesser administrative actions may be used by the Agency. FDA's longstanding interpretation of § 56.120(b) is that FDA may impose these restrictions on a noncompliant IRB until the IRB takes appropriate corrective action. The text of the regulation, however, suggests that it is the Agency that would withhold approval of studies that have been reviewed by a noncompliant IRB, rather than authorizing FDA to direct the IRB to stop approving new studies until the IRB comes back into compliance.

This proposed rule would amend § 56.120(b) to read that, in addition, until the IRB or the parent institution takes appropriate corrective action, the Agency may require the IRB to withhold approval of new studies, direct that no new subjects be added to ongoing studies, or terminate ongoing studies. This will ensure that those activities are suspended until the IRB takes appropriate corrective action to address its noncompliance. We believe revising § 56.120(b) will improve the clarity and accuracy of the regulations. We are also proposing to redesignate § 56.120(b)(4) as § 56.120(c), and § 56.120(c) as § 56.120(d).

FDA may notify relevant State and Federal regulatory Agencies when warranted to assure that organizations with a need to know about the IRB's apparent noncompliance are appropriately informed. The revision would eliminate confusion by stating clearly that FDA is authorized to notify others about the IRB's noncompliance. We believe these changes will ensure clarity and improve the accuracy of the regulations.

II. Why is FDA publishing this proposed rule?

This proposed rule is a companion to a direct final rule affirming FDA's longstanding interpretation of § 56.120(b), *i.e.,* that FDA may impose these restrictions on a noncompliant IRB until the IRB takes appropriate corrective action. The direct final rule is published in the final rules section of this issue of the **Federal Register.** The direct final rule and this companion proposed rule are substantively identical. This companion proposed rule will serve the purpose of issuing a proposed rule under usual notice-and-comment procedures in the event we withdraw the direct final rule because we receive significant adverse comment. We are publishing the direct final rule because we believe it is noncontroversial, and we do not anticipate any significant adverse comments. If we do not receive any significant adverse comments in response to the direct final rule, we will not take any further action on this proposed rule. Instead, within 30 days after the comment period ends, we intend to publish a notice that confirms the effective date of the direct final rule.

If FDA receives any significant adverse comment regarding the direct final rule, we will publish a notice of significant adverse comment and withdraw the direct final rule within 30 days after the comment period ends. We will then proceed to final rulemaking using our usual notice-and-comment rulemaking procedures under the Administrative Procedure Act (APA). The comment period for this companion proposed rule runs concurrently with the direct final rule's comment period. We will consider any comments that we receive in response to this companion proposed rule to be comments also regarding the direct final rule and vice versa. We do not intend to provide additional opportunity for comment.

A significant adverse comment is one that explains why the rule would be inappropriate (including challenges to the rule's underlying premise or approach), or would be ineffective or unacceptable without a change. In determining whether an adverse comment is significant and warrants withdrawing a direct final rule, we consider whether the comment raises an issue serious enough to warrant a substantive response in a notice-and-comment process in accordance with section 553 of the APA (5 U.S.C. 553). Comments that are frivolous, insubstantial, or outside the scope of the rule will not be considered adverse. A comment recommending a rule change in addition to the rule would not be considered a significant adverse comment, unless the comment states why the rule would be ineffective without the additional change. In addition, if a significant adverse comment applies to part of a rule and that part can be severed from the remainder of the rule, we may adopt as final those parts of the rule that are not the subject of a significant adverse comment.

You can find additional information about FDA's direct final rulemaking procedures in the guidance document entitled "Guidance for FDA and Industry: Direct Final Rule Procedures,"[1] announced in the **Federal Register** of November 21, 1997 (62 FR 62466).

III. Legal Authority

This proposed rule, if finalized, would amend § 56.120(b). FDA's authority to modify § 56.120(b) arises from the same authority under which FDA initially issued this regulation, the IRB regulations, and general administrative provisions of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 343, 346, 346a, 348, 350a, 350b, 351, 352, 353, 355, 360, 360c–360f, 360h, 360i, 360j, 360hh–360ss, 371, 379e, 381; 42 U.S.C. 216, 241, 262).

IV. Analysis of Environmental Impact

We have determined under 21 CFR 25.30(h) and 25.34(a) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

V. Economic Analysis of Impacts

We have examined the impacts of the proposed rule under Executive Order 12866, Executive Order 13563, the Regulatory Flexibility Act (5 U.S.C. 601–612), and the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4). Executive Orders 12866 and 13563 direct us to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity). We believe that this proposed rule is not a significant regulatory action as defined by Executive Order 12866.

The Regulatory Flexibility Act requires us to analyze regulatory options that would minimize any significant impact of a rule on small entities. Because this proposed rule would not add any additional regulatory burdens, we propose to certify that this proposed rule will not have a significant economic impact on a substantial number of small entities.

Section 202(a) of the Unfunded Mandates Reform Act of 1995 requires us to prepare a written statement, which includes an assessment of anticipated costs and benefits, before proposing "any rule that includes any Federal mandate that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100,000,000 or more (adjusted annually for inflation) in any one year." The current threshold after adjustment for inflation is $144 million, using the most current (2014) Implicit Price Deflator for the Gross Domestic Product. This proposed rule would not result in an expenditure in any year that meets or exceeds this amount.

The purpose of this proposed rule is to affirm FDA's longstanding interpretation of § 56.120(b), that FDA may impose these restrictions on a noncompliant IRB until the IRB takes appropriate corrective action. The amendment will improve the clarity and accuracy of the regulations. Because this proposed rule is a clarification and would impose no additional regulatory burdens, this regulation is not anticipated to result in any compliance costs and the economic impact is expected to be minimal.

VI. Paperwork Reduction Act of 1995

FDA tentatively concludes that this proposed rule contains no collection of information. Therefore, clearance by the Office of Management and Budget under the Paperwork Reduction Act of 1995 is not required.

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[1] *http://www.fda.gov/regulatoryinformation/guidances/ucm125166.htm.*

VII. Federalism

We have analyzed this proposed rule in accordance with the principles set forth in Executive Order 13132. We have determined that the rule does not contain policies that have substantial direct effects on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. Accordingly, we conclude that the rule does not contain policies that have federalism implications as defined in the Executive Order and, consequently, a federalism summary impact statement is not required.

List of Subjects in 21 CFR Part 56

Human research subjects, Reporting and recordkeeping requirements, Safety.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, it is proposed that 21 CFR part 56 is amended as follows:

PART 56—INSTITUTIONAL REVIEW BOARDS

■ 1. The authority citation for 21 CFR part 56 is revised to read as follows:

Authority: 21 U.S.C. 321, 343, 346, 346a, 348, 350a, 350b, 351, 352, 353, 355, 360, 360c–360f, 360h, 360i, 360j, 360hh–360ss, 371, 379e, 381; 42 U.S.C. 216, 241, 262.

■ 2. In § 56.120, redesignate paragraphs (b)(4) and (c) as paragraphs (c) and (d), respectively, and revise paragraph (b) and newly designated paragraph (c) to read as follows:

§ 56.120 Lesser administrative actions.

* * * * *

(b) On the basis of the IRB's or the institution's response, FDA may schedule a reinspection to confirm the adequacy of corrective actions. In addition, until the IRB or the parent institution takes appropriate corrective action, the Agency may require the IRB to:

(1) Withhold approval of new studies subject to the requirements of this part that are conducted at the institution or reviewed by the IRB;

(2) Direct that no new subjects be added to ongoing studies subject to this part; or

(3) Terminate ongoing studies subject to this part when doing so would not endanger the subjects.

(c) When the apparent noncompliance creates a significant threat to the rights and welfare of human subjects, FDA may notify relevant State and Federal regulatory agencies and other parties with a direct interest in the Agency's action of the deficiencies in the operation of the IRB.

* * * * *

Dated: March 29, 2016.

Leslie Kux,

Associate Commissioner for Policy.

[FR Doc. 2016–07524 Filed 4–1–16; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 330

[Docket No. FDA–2016–N–0543]

RIN 0910–AH30

Food and Drug Administration Review and Action on Over-the-Counter Time and Extent Applications

AGENCY: Food and Drug Administration, HHS.

ACTION: Proposed rule.

SUMMARY: The Food and Drug Administration (FDA or Agency) is proposing to amend its nonprescription (over-the-counter or OTC) drug regulations. The proposed rule, if finalized as proposed, would supplement the time and extent application (TEA) process for OTC drugs by establishing timelines and performance metrics for FDA's review of non-sunscreen TEAs, as required by the Sunscreen Innovation Act (SIA). We are also proposing other changes to make the TEA process more efficient.

DATES: Submit either electronic or written comments on the proposed rule by June 3, 2016. Submit comments on information collection issues under the Paperwork Reduction Act of 1995 by June 3, 2016, (see the "Paperwork Reduction Act of 1995" section of this document).

ADDRESSES: You may submit comments as follows:

Electronic Submissions

Submit electronic comments in the following way:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to *http://www.regulations.gov* will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else's Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on *http://www.regulations.gov.*
- If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission and in the manner detailed (see "Written/Paper Submissions" and "Instructions").

Written/Paper Submissions

Submit written/paper submissions as follows:

- *Mail/Hand delivery/Courier (for written/paper submissions):* Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.
- For written/paper comments submitted to the Division of Dockets Management, FDA will post your comment, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in "Instructions."

Instructions: All submissions received must include the Docket No. FDA–2016–N–0543 for "Food and Drug Administration Review and Action on Over-the-Counter Time and Extent Applications." Received comments will be placed in the docket and, except for those submitted as "Confidential Submissions," publicly viewable at *http://www.regulations.gov* or at the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

- *Confidential Submissions*—To submit a comment with confidential information that you do not wish to be made publicly available, submit your comments only as a written/paper submission. You should submit two copies total. One copy will include the information you claim to be confidential with a heading or cover note that states "THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION." The Agency will review this copy, including the claimed confidential information, in its consideration of comments. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on *http://www.regulations.gov.* Submit both copies to the Division of Dockets Management. If you do not wish your name and contact information to be made publicly available, you can provide this information on the cover sheet and not in the body of your comments and you must identify this information as "confidential." Any information marked as "confidential" will not be disclosed except in accordance with 21 CFR 10.20 and other applicable disclosure law. For more information about FDA's posting of comments to public dockets, see 80 FR 56469, September 18, 2015, or access the information at: *http://www.fda.gov/regulatoryinformation/dockets/default.htm.*

Docket: For access to the docket to read background documents or the electronic and written/paper comments received, go to *http://www.regulations.gov* and insert the docket number, found in brackets in the heading of this document, into the "Search" box and follow the prompts and/or go to the Division of Dockets Management, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

Submit comments on information collection issues to the Office of Management and Budget in the following ways:

- Fax to the Office of Information and Regulatory Affairs, OMB, Attn: FDA Desk Officer, FAX: 202–395–7285, or email to *oira_submission@omb.eop.gov.* All comments should be identified with the title, Food and Drug Administration Review and Action on Over-the-Counter Time and Extent Applications.

FOR FURTHER INFORMATION CONTACT: *With regard to the proposed rule:* Kristin Hardin, Center for Drug Evaluation and Research (CDER), Food and Drug Administration, 10903 New Hampshire Ave., Silver Spring, MD 20993, 240–402–4246, *Kristen.Hardin@fda.hhs.gov.*

With regard to the information collection: Ila Mizrachi, Office of Operations, Food and Drug Administration, 8455 Colesville Rd., Rm. 14526, Silver Spring, MD 20993–0002, *PRAStaff@fda.hhs.gov.*

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I. Executive Summary

A. Purpose and Scope of the Proposed Rule

This proposed rule is intended to implement part of the Sunscreen Innovation Act (SIA) (21 U.S.C. Ch. 9 sub. 5 part I, enacted November 26, 2014). Among other provisions, the SIA amended the Federal Food, Drug, and Cosmetic Act (FD&C Act) by adding section 586F to the FD&C Act. Section 586F(b) directs FDA to issue regulations establishing timelines and related performance metrics for the review of certain submissions under FDA's regulation governing TEAs, which is codified at 21 CFR 330.14. The TEA regulation sets forth criteria and procedures by which OTC drugs initially marketed in the United States after the OTC Drug Review began in 1972 and OTC drugs without any U.S. marketing experience can be considered in the OTC drug monograph system. If a drug meets each of the conditions contained in any applicable OTC drug monograph, and other applicable regulations, it is considered generally recognized as safe and effective (GRASE) and not misbranded, and is not required by FDA to be approved in a new drug application (NDA) under section 505 of the FD&C Act. Drugs determined to be not GRASE (or non-monograph) must be approved under section 505 of the FD&C Act before being marketed in the United States (see section II.A. for more detail on the OTC Drug Review and the TEA process).

Section 586F(b) of the FD&C Act specifically requires FDA to issue regulations providing for the timely and efficient review of submissions under the TEA regulation, including establishing (1) reasonable timelines for reviewing and acting on such submissions for non-sunscreen OTC active ingredients and other conditions (non-sunscreen TEA conditions) and (2) measurable metrics for tracking the extent to which such timelines are met.

FDA is also proposing to amend the TEA regulation to make the TEA process more efficient and predictable for both product sponsors and FDA by adding filing determination requirements and criteria and by addressing the withdrawal of consideration of TEA and safety and effectiveness data submissions.

The timelines and metrics in this proposed rule would apply to non-sunscreen TEA conditions (see section V.A for more detail). FDA is addressing timelines for review of sunscreen active ingredients and other related topics regarding sunscreens separately, under other provisions of the SIA (see section II.B for more detail).

B. Summary of the Major Provisions of the Proposed Rule

The proposed rule implements the SIA requirements for non-sunscreen TEAs by adding proposed new § 330.15 to FDA's OTC drug monograph regulations (21 CFR part 330). The proposed new section has two major provisions regarding actions to be taken by FDA, consistent with requirements in the SIA. In particular, proposed § 330.15(c) establishes timelines for FDA to review and take action on non-sunscreen TEA conditions, and proposed § 330.15(b) describes measurable metrics that FDA will use for tracking the extent to which the timelines set forth in the regulations are met. Proposed § 330.15(a) generally limits the applicability of these timelines to non-sunscreen TEAs submitted after the enactment of the SIA, with one exception.

We are proposing to amend § 330.14 to:

- Add provisions concerning filing determinations regarding safety and effectiveness data submissions for eligible TEA conditions (*i.e.,* determinations as to whether such submissions are sufficiently complete to permit a substantive review by FDA) (§ 330.14(j)),
- add provisions regarding the withdrawal of consideration of TEAs and safety and effectiveness data submissions (§ 330.14(k)),
- add certain definitions (§ 330.14(a)), and
- make minor conforming and clarifying changes.

C. Legal Authority

This rule is proposed under FDA's authority to regulate OTC drug products under the FD&C Act (see sections 201, 501, 502, 503, 505, 510, 586F, and 701(a) of the FD&C Act (21 U.S.C. 321, 351, 352, 353, 355, 360, 360fff–6, and 371(a))). As stated in the **Federal Register** of January 22, 2002 (67 FR 3069), in which the final rule establishing the TEA process was published, submission of an NDA has been required before marketing a new drug since passage of the FD&C Act in 1938 (21 U.S.C. 355). To market a new drug, it must first be approved under section 505 of the FD&C Act. Section 701(a) of the FD&C Act authorizes FDA to issue regulations for the efficient enforcement of the FD&C Act. FDA's regulations in 21 CFR part 330 describe the conditions for a drug to be considered GRASE and not misbranded. If a drug meets each of the conditions contained in part 330, as well as each of the conditions contained in any applicable OTC drug monograph, and other applicable regulations, it is considered GRASE and not misbranded, and is not required by FDA to obtain approval under section 505 of the FD&C Act.

In addition, section 586F of the FD&C Act requires FDA to issue regulations providing for the timely and efficient review of certain submissions under the TEA regulation at 21 CFR 330.14. Section 586F of the FD&C Act specifically requires these regulations to include timelines and metrics associated with the review of those submissions under the TEA regulation. Proposed § 330.15 would add timeline and metrics provisions that are intended to implement section 586F of the FD&C Act.

D. Costs and Benefits

We expect that the proposed rule would make the TEA process more efficient and predictable, and improve communication between FDA and sponsors. Sponsors may benefit from knowing if additional data is needed and what optimal steps to take to receive a GRASE determination, and we would be able to bring resolution to TEA conditions. However, we do not know the monetary value of added predictability to sponsors.

We expect the rule would create a minimal burden on sponsors, primarily when they send a letter to request a meeting with us. Thus, we anticipate no increase in annual recurring costs for either small or large sponsors. We expect the six current sponsors of non-sunscreen TEAs covering conditions that have been found eligible to be considered for inclusion in the OTC drug monograph system would incur one-time costs to read and understand the proposed rule. We also estimate sponsors will submit two additional TEAs annually, and each of these sponsors would also spend time reading and understanding the proposed rule. The present value of the total costs over 10 years ranges from about $17,000 to $35,000 with a 7 percent discount rate and from about $19,000 to $38,000 with a 3 percent discount rate. With a discount rate of 7 percent and 3 percent, we estimate that on average affected sponsors would incur less than $150 of annualized costs per year.

II. Table of Abbreviations and Acronyms Commonly Used in This Document

ANDA	Abbreviated New Drug Application
FDA	Food and Drug Administration
FD&C Act	Federal Food, Drug, and Cosmetic Act
GRASE	Generally Recognized as Safe and Effective
HHS	U.S. Department of Health and Human Services
NDA	New Drug Application
NOE	Notice of Eligibility
NPRM	Notice of Proposed Rulemaking
OMB	Office of Management and Budget
OTC	Over-the-Counter
PRA	Paperwork Reduction Act
SIA	Sunscreen Innovation Act of 2014
TEA	Time and Extent Application

III. Background

A. FDA Regulation of Over-the-Counter (OTC) Drugs

The OTC drug monograph system was established to evaluate the safety and effectiveness of all OTC drug products marketed in the United States before May 11, 1972, that were not covered by new drug applications (NDAs) and all OTC drug products covered by "safety" NDAs that were marketed in the United States before enactment of the 1962 drug amendments to the FD&C Act. In 1972, FDA began its OTC Drug Review to evaluate OTC drugs by categories or classes (*e.g.*, sunscreens, antacids), rather than on a product-by-product basis, and to develop "conditions" under which classes of OTC drugs are GRASE and not misbranded.

FDA publishes these conditions in the **Federal Register** in the form of OTC drug monographs, which consist primarily of active ingredients, labeling, and other general requirements. Final monographs for OTC drugs that are GRASE and not misbranded are codified in 21 CFR part 330. Manufacturers of drugs that meet each of the conditions contained in part 330, including each of the conditions contained in any applicable OTC drug monograph, and other applicable regulations, need not seek FDA clearance before marketing.

Initially, OTC drug conditions not marketed in the U.S. prior to the inception of the OTC Drug Review were not eligible for review under the OTC drug monograph process. The TEA process, established by regulations finalized in 2002 (21 CFR 330.14), expanded the scope of the OTC Drug Review. A "condition," for purposes of the TEA regulation, is an active ingredient or botanical drug substance (or a combination of active ingredients or botanical drug substances), dosage form, dosage strength, or route of administration marketed for a specific OTC use. The TEA process provides a potential pathway for OTC conditions, including newer active ingredients that previously had no U.S. marketing history or that were marketed in the United States after the OTC Drug Review began, to be marketed under an OTC drug monograph.

Active ingredients and other conditions that satisfy the TEA eligibility requirements are subject to the same safety, effectiveness, and labeling standards that apply to other conditions under the OTC monograph process (see 21 CFR 330.14(g)). The TEA regulation requires multi-step, notice-and-comment rulemaking procedures before an active ingredient or other condition is added to an OTC drug monograph.

The TEA process begins with the submission of a TEA containing data documenting the OTC marketing history of the active ingredient, combination of active ingredients, or other condition(s) (*e.g.*, a new dosage strength for an active ingredient already included in an OTC drug monograph). FDA reviews the application and determines whether the sponsor's marketing data establish that the condition or conditions have been marketed to a material extent and for a material time, as set forth in the TEA regulation's eligibility requirements. If the condition is not found eligible, FDA will send a letter to the sponsor explaining why the condition was not found acceptable. If the marketing data satisfy the TEA regulation's eligibility criteria, FDA publishes a notice of eligibility (NOE) in the **Federal Register** announcing that the active ingredient or other condition is being considered for inclusion in an OTC drug monograph and calling for submissions of safety and efficacy data for the proposed OTC use.

We note that although a TEA is the application regarding the time and extent of marketing, which leads to an eligibility determination (resulting in publication of an NOE or a letter of ineligibility), references to TEAs or applications under section 330.14 (including in the SIA) sometimes encompass FDA's review of the condition's eligibility and the GRASE determination for the condition. Thus, these references may be used to mean the TEA itself, the safety and effectiveness data submission, FDA's GRASE determination, associated order or rulemaking actions, or all of these. In this proposed rule and preamble, the terms "TEA" and "safety and effectiveness data submission" are used, where appropriate, to describe the two distinct submissions under the TEA regulation. However, the term "TEA process" may be used when referring to one or more actions under the TEA regulation.

If, after FDA reviews the safety and effectiveness data, the Agency initially determines that the active ingredient or other condition is GRASE, it will publish a proposed rule to include the condition in an appropriate OTC drug monograph.

If the condition is initially determined not to be GRASE, FDA will inform the sponsor and other interested parties that submitted data of its decision by letter, and will include the letter in the relevant public docket (§ 330.14(g)(4)). The Agency will also publish a notice of proposed rulemaking to include the condition in § 310.502. The sponsor and other interested parties will have an opportunity to submit comments and new data on FDA's initial determination and proposed rule (§ 330.14(g)(5)). After evaluation of any additional data submitted, FDA will either issue a final rule or a new proposed rule, if necessary, in the **Federal Register**.

B. The Sunscreen Innovation Act (SIA)

In November 2014, Congress passed the SIA to supplement the TEA process with regard to both sunscreen and non-sunscreen OTC drug products. Proposed § 330.15 addresses section 586F of the FD&C Act, which was added by the SIA and only applies to TEAs for drugs other than nonprescription sunscreen active ingredients or combinations of nonprescription sunscreen active ingredients (see sections 586 and 586F of the FD&C Act, as amended by the SIA). For FDA review of non-sunscreen TEA conditions, section 586F includes two main requirements, one regarding timelines for review of eligible TEA conditions pending before the date of enactment of the SIA, and the other regarding timelines and performance metrics for the TEA process going forward.

The first general requirement (see FD&C Act section 586F(a)) is that FDA provide the option of selecting one of four frameworks for review to each non-sunscreen TEA sponsor who (1) had submitted a TEA for a condition that had been deemed eligible to be considered for inclusion in the OTC monograph system before the date of enactment of the SIA, and (2) requested the framework option within 180 days after enactment. FDA was required to provide the framework options to requesting sponsors by no later than one year after enactment of the SIA (by November 26, 2015). Before the date of SIA enactment, there were six non-sunscreen TEAs for conditions that had been found eligible to be considered for inclusion in the OTC drug monograph system: (1) Piroctone olamine (for dandruff control) (69 FR 7652, 2/18/04; Docket 2004N–0050 (FDA–2004–N–0037)); (2) triclosan (for oral healthcare) (69 FR 40640, 7/6/04; Docket 1981N–0033P (FDA–1981–N–0015)); (3) triclosan (for acne treatment) (70 FR 72447, 12/5/05; Docket 2005N–0445 (FDA–2005–N–0454)); (4) climbazole (for dandruff control) (70 FR 72448, 12/5/05; Docket 2005N–0444 (FDA–2005–N–0021)); (5) sodium picosulfate (for laxative use) (71 FR 35917, 6/22/06; Docket 2006O–0232 (FDA–2006–O–0057)); and (6) sodium shale oil sulfonate (for dandruff control) (74 FR 15741, 4/7/09; Docket FDA–2009–N–0146).

The sponsors of three of those TEAs requested that FDA provide a review framework by the deadline established in section 586F(a) of the FD&C Act. The three TEAs are for: (1) Piroctone olamine (for dandruff control) (69 FR 7652, 2/18/04; Docket 2004N–0050 (FDA–2004–N–0037)); (2) sodium picosulfate (for laxative use) (71 FR 35917, 6/22/06; Docket 2006O–0232 (FDA–2006–O–0057)); and (3) sodium shale oil sulfonate (for dandruff control) (74 FR 15741, 4/7/09; Docket FDA–2009–N–0146). FDA provided the review framework options to the requesting sponsors on November 24, 2015. With regard to the three sponsors who did not request or elect a framework in accordance with section 586F(a) of the FD&C Act, the eligible conditions addressed by their TEAs will be reviewed under the timelines set forth in proposed § 330.15 (if finalized as proposed).

The second general requirement (see FD&C Act section 586F(b)) is that FDA issue a regulation that includes (1) timelines for review of non-sunscreen TEA conditions and (2) measurable metrics for tracking the extent to which the timelines are met. This proposed rule includes both timelines and metrics, as required by the SIA.

FDA has determined that with regard to non-sunscreen TEAs, the best way to both address the statutory requirements of the SIA and to make certain FDA-initiated modifications to the TEA process set forth in § 330.14 is to (1) establish a new section (proposed § 330.15) that is specific to non-sunscreen TEA conditions, and (2) amend § 330.14 with regard to process improvements for TEAs for all OTC drugs (such as providing format and content criteria for a filing determination and addressing withdrawal of consideration).

In addition to developing new § 330.15, which implements SIA requirements with regard to the TEA process for non-sunscreens, FDA proposes to make certain changes to the process set forth in § 330.14 that we believe will make the TEA process more clear and efficient for both sponsors and FDA. These proposed changes to § 330.14 are discussed in more detail in this document, but notably include provisions that address filing determination requirements with regard to safety and effectiveness data submissions (to allow FDA to determine, and sponsors to know, early on whether a submission is sufficiently complete to permit a substantive review) and provisions regarding withdrawal of consideration of a TEA or safety and effectiveness data submission.

IV. Legal Authority

This rule is being proposed under FDA's authority to regulate OTC drug products under the FD&C Act (see sections 201, 501, 502, 503, 505, 586F, and 701(a) of the FD&C Act (21 U.S.C. 321, 351, 352, 353, 355, 360fff-6, and 371(a))). As stated in the **Federal Register** of January 22, 2002 (67 FR 3069), in which the final rule establishing the TEA process was published, submission of an NDA has been required before marketing a new drug since passage of the FD&C Act in 1938 (21 U.S.C. 355). To market a new drug, it must first be approved under section 505 of the FD&C Act. Section 701(a) of the FD&C Act authorizes FDA to issue regulations for the efficient enforcement of the FD&C Act. FDA's regulations in 21 CFR part 330 describe the conditions for a drug to be considered GRASE and not misbranded. If a drug meets each of the conditions contained in part 330, as well as each of the conditions contained in any applicable OTC drug monograph, and other applicable regulations, it is considered GRASE and not misbranded, and is not required by FDA to obtain approval under section 505 of the FD&C Act.

In addition, section 586F of the FD&C Act requires FDA to issue regulations providing for the timely and efficient review of certain submissions under the TEA regulation at 21 CFR 330.14. Section 586F of the FD&C Act specifically requires these regulations to include timelines and metrics associated with the review of certain submissions under the TEA regulation. Proposed § 330.15 would add timeline and metrics provisions that are intended to implement section 586F of the FD&C Act.

V. Description of the Proposed Rule

In this rule, we are proposing to establish new § 330.15 and to amend current § 330.14. In particular, we are proposing to: (1) Establish timelines and metrics for review of non-sunscreen TEA conditions, (2) add provisions concerning filing determination requirements with regard to the content and format of safety and effectiveness data submissions under § 330.14(f), (3) address withdrawal of consideration of TEAs and safety and effectiveness data submissions, (4v) add related definitions, and (5) make clarifying and conforming changes to the TEA regulation. These proposed changes are discussed in detail in this section.

A. Timelines for FDA Review and Action on Time and Extent Applications and Safety and Effectiveness Data Submissions (Proposed § 330.15)

The SIA mandates that FDA issue regulations to establish timelines and metrics regarding the review of non-sunscreen TEA conditions, and provides that the proposed timelines may vary based on the content, complexity, and format of the submission, and that they must (1) reflect FDA's public health priorities, including the potential public health benefits posed by the inclusion of additional drugs in the OTC drug monograph system, (2) take into consideration the availability of FDA resources for carrying out such priorities and the relevant review processes and procedures, and (3) be reasonable, taking into account the required consideration of priorities and resources (FD&C Act section 586F(b)(2)). Proposed § 330.15 is intended to implement these requirements.

1. Applicability (See Proposed § 330.15(a))

As a general matter, the timeline provisions in proposed § 330.15 apply to FDA and are triggered by specific actions by sponsors, such as submission of a TEA or submission of a safety and effectiveness data submission (as defined in proposed § 330.14(a)) and, in some cases, FDA (*e.g.*, the date of filing). The metrics provisions also apply to FDA.

Proposed § 330.15(a) describes which TEA conditions are subject to the timelines for FDA review and action in this section and which are not. We invite comment on the proposed applicability of this section. In particular, FDA is proposing that the review of an active ingredient or other condition in a TEA submitted under § 330.14 for consideration in the OTC drug monograph system would be subject to the proposed timelines, with two exceptions.

First, in § 330.15(a)(1), FDA proposes that § 330.15 does not apply to a sunscreen active ingredient or a combination of sunscreen active ingredients or other conditions for such ingredients. Section 586F(b) of the FD&C Act directs the Agency to issue regulations establishing timelines for drugs other than nonprescription sunscreen active ingredients or combinations of nonprescription sunscreen active ingredients. The SIA recognizes that active ingredients can only be GRASE under specified conditions. For example, section 586A of the FD&C Act, which was added by the SIA to provide an alternative route for inclusion in the sunscreen monograph, states that a person may submit a request to FDA for a determination of whether a nonprescription sunscreen active ingredient or combination of ingredients, for use under specified conditions, to be prescribed, recommended, or suggested in the labeling thereof (including dosage form, dosage strength, and route of administration) is GRASE. Because the TEA regulation addresses active ingredients and other conditions, including dosage forms, and an active ingredient can only be GRASE under specified conditions, we understand the reference to TEAs for drugs other than sunscreen active ingredients in section 586F(b) of the FD&C Act to be distinguishing sunscreen active ingredients and related conditions from non-sunscreen active ingredients and related conditions. Furthermore, "pending requests" for sunscreen active ingredients under the SIA are subject to the provisions of section 586C(b) of the FD&C Act, as amended by the SIA (21 U.S.C. 360fff–3(b)), which include timeframes for FDA review and action. Therefore, under proposed § 330.15(a), § 330.15 would not apply to sunscreen active ingredients and related conditions.

Second, in § 330.15(a)(2), FDA proposes that § 330.15 generally does not apply to non-sunscreen active ingredients or other conditions submitted in TEAs under § 330.14 on or before the date of enactment of the SIA. Section 586F(b)(1) of the FD&C Act directs the Agency to issue regulations establishing timelines for the review of TEA conditions submitted after the date of enactment of the SIA. However, as provided in the SIA, any non-sunscreen TEA conditions determined to be eligible to be considered for inclusion in the OTC drug monograph system before the date of enactment of the SIA, for which the sponsor did not request a framework for review under section 586F(a)(1), will also be reviewed under the timelines set forth in § 330.15(c) of this proposed rule (see FD&C Act section 586F(a)(1)(C)) (if finalized as proposed). Accordingly, the scope of the exclusion in proposed § 330.15(a)(2) references section 586F(a)(1)(C) of the FD&C Act to account for such TEA conditions.

For sponsors of TEAs covering conditions that had been found eligible to be considered for inclusion in the OTC drug monograph system before the date of enactment of the SIA who elected to choose a framework for review, FDA was required to provide four optional frameworks that set forth timelines for FDA review (FD&C Act section 586F(a)((2)). The frameworks included timelines for review if the sponsors choose an order process with or without a filing determination, or a rulemaking process with or without a filing determination. A notification of optional frameworks was provided to each requesting sponsor on November 24, 2015. Before the date of enactment of the SIA, there were six non-sunscreen TEA conditions that were found by FDA to be eligible to be considered for inclusion in the OTC drug monograph system (listed in section II.B). Of these, three sponsors elected a framework for review, and three did not (listed in section II.B).

2. Timelines for FDA Review and Action (Proposed New § 330.15(c)).

As discussed in the introduction to section V.A, section 586F(b) of the FD&C Act, as amended by the SIA, directs FDA to establish timelines for the review of certain TEA conditions. As also discussed in section V.A.1, in addition to applying to new non-sunscreen TEAs, these timelines would apply to certain non-sunscreen TEA conditions that were found to be eligible before November 26, 2014. Section 586F(b) of the FD&C Act also requires timelines for internal procedures related to the review of safety and effectiveness data submissions.

FDA is proposing to establish the timelines described in this section of the document for FDA review and action, as described in proposed new § 330.15(c).

Note that terms for certain actions that begin review timelines for FDA are defined in proposed amendments to

§ 330.14 (*e.g.,* "date of filing"). In addition to clarifying that its definitions apply to proposed § 330.15, proposed § 330.14(a) would clarify the applicability of the definitions in section 201 of the FD&C Act by expressly stating that any relevant definitions in that section, such as the definition of "person" at section 201(e), would apply to §§ 330.14 and 330.15.

a. Proposed Timelines

The proposed timelines are:

- FDA will issue a notice of eligibility or post to the docket a letter of ineligibility, in accordance with § 330.14(d) and (e), within 180 days of submission of a TEA under § 330.14(c).
- FDA will issue a filing determination in accordance with § 330.14(j) within 90 days of receipt by FDA of a safety and effectiveness data submission from the sponsor under § 330.14(f). Under proposed § 330.14(a)(5), a safety and effectiveness data submission is defined as a data package submitted by a sponsor that includes safety and effectiveness data and information under § 330.14(f) and that is represented by the sponsor as being a complete submission. Therefore, FDA will not start the 90-day filing determination period until the sponsor has confirmed that it considers the submission to contain all data and information required under § 330.14(f) by providing a statement that the submission is a complete safety and effectiveness data submission. If the sponsor submitted such a safety and effectiveness data submission at the same time as the sponsor submitted the TEA, and the condition addressed in the TEA is deemed eligible for consideration, FDA will issue a filing determination within 90 days after issuing the notice of eligibility.
- If the active ingredient or other condition is initially determined not to be GRASE, FDA will inform the sponsor and other interested parties who have submitted data of its determination by feedback letter in accordance with § 330.14(g)(4), within 730 days (generally 24 months) from the date of filing. FDA is considering whether to add a codified provision to address sponsor requests for additional time in response to a feedback letter and how that would affect the timeline for review. We welcome comments on this issue.
- FDA will issue a notice of proposed rulemaking within 1,095 days (generally 36 months) from the date of filing to either:
  - ○ Include the active ingredient or other condition in an appropriate OTC monograph(s), either by amending an existing monograph(s) or establishing a new monograph(s), if necessary; or
  - ○ Include the active ingredient or other condition in § 310.502 (which would require the sponsor to seek approval under section 505 of the FD&C Act before marketing).
- FDA will issue a final rule within 912 days (generally 30 months) of the closing of the docket of the proposed rulemaking under § 330.15(c)(4). If the docket is reopened, the final rule will be issued within 912 days of the closing of the re-opened docket.

For non-sunscreen TEA conditions that were found to be eligible before enactment of the SIA and that would be subject to the timelines in proposed § 330.15, FDA intends to treat the date of publication of the final rule for § 330.15 to be the date of filing for purposes of §§ 330.14 and 330.15. Therefore, upon the publication of the final rule, the timelines in proposed § 330.15(c)(3), if applicable, and § 330.15(c)(4) would begin for these eligible TEA conditions.

b. Development of Timelines

As required by the SIA (section 586F(b)(2) of the FD&C Act), FDA considered specific factors in developing the timelines in proposed new § 330.15(c). In particular, the SIA provides that the timelines for the review of non-sunscreen TEA conditions *may* vary based on the content, complexity, and format of the submission, and *shall* (1) reflect FDA public health priorities (including potential public health benefits of including additional drugs in the OTC drug monograph system), (2) take into consideration the resources available for carrying out such public health priorities and the relevant review processes and procedures, and (3) be reasonable, taking into account the required consideration of priorities and resources just described (section 586F(b)(2)(A) and (B) of the FD&C Act).

FDA is allowed (for the "may" factors) or required (for the "shall" factors) to take these factors into account in the timelines for review of non-sunscreen TEAs and related submissions. These SIA provisions recognized factors that could possibly affect how long it may take FDA to complete review of a particular TEA and related submissions. The timelines proposed in § 330.15 factored in the considerations that are required under the SIA; they reflect the projected time necessary for FDA to complete its review of marketing, filing, and scientific data and other information, as well as to make tentative and final determinations about the adequacy of the submissions to ultimately support a finding that the active ingredient or other condition is or is not GRASE and not misbranded for nonprescription use, based on the Agency's public health priorities and the resources available to carry them out. The timelines also include the projected time necessary to draft and finalize the letters or rules (proposed and final), and when applicable, prepare the document for publication in the **Federal Register**. In addition, the timelines take into account other activities that may occur during the review, such as convening an advisory committee meeting, meeting with sponsors, or both. FDA believes that the proposed timelines are reasonable, taking into consideration FDA's priorities and resources. More detail on how FDA took these factors into account is provided in this section.

i. FDA Public Health Priorities

Under section 586F(b)(2)(B)(i) of the FD&C Act, the timelines must reflect FDA's public health priorities, including the potential public health benefits posed by the inclusion of additional drugs in the OTC drug monograph system. FDA has a very broad mandate and multiple public health priorities, with limited resources to address these priorities.

FDA's Center for Drug Evaluation and Research (CDER) is responsible for regulating the safety and efficacy of both prescription and nonprescription human drugs. Like FDA as a whole, CDER must continually balance multiple important public health priorities, of which the OTC Drug Review is one. CDER does, and will continue to, consider the OTC Drug Review among its priorities as it endeavors to appropriately allocate staff and resources within the context of all CDER responsibilities.

Examples of how FDA public health priorities may affect the time required for the review of non-sunscreen TEA conditions under the proposed timelines include situations such as a public health emergency or competing high priority work that requires diversion of the staff assigned to a TEA or safety and effectiveness data submission.

ii. Resources Available for Carrying Out Such Priorities

Under section 586F(b)(2)(B)(ii), the timelines must take into consideration Agency resources available for carrying out its public health priorities and the processes and procedures related to the review of TEA conditions. Examples of resource constraints that may affect the time required for review include, but are not limited to: multiple TEAs arriving at or near the same time; general expected staff and budget constraints; unexpected staff and budget constraints; personnel turnover and lag times in hiring new staff; etc. For example, FDA has only a certain number of trained staff available to assign to TEA review work, and these staff generally have other assigned work in addition to TEA reviews.

iii. Reasonableness, Taking Into Consideration Agency Priorities and Resources

In developing the timelines set forth in proposed new § 330.15(c), FDA has attempted to set reasonable timelines that will be achievable in most circumstances, given our experience to date with TEAs and related safety and effectiveness data submissions. While FDA expects that the filing determination requirements we propose adding to § 330.14(j) will help to avoid major content and format deficiencies in incoming safety and effectiveness data submissions, there is likely still to be some variation in the formatting of incoming TEAs and safety and effectiveness data submissions, and a related variation in the ease and efficiency of review.

In determining reasonable timelines, FDA also considered the potential effect on stakeholders, including TEA sponsors and the public. In addition to considering the benefits that the proposed timelines and related metrics would provide to sponsors (*e.g.,* more transparency regarding the TEA review process, increased predictability regarding how long each major process step is expected to take, and metrics on how long each step actually takes), FDA also considered other potential impacts of the proposed timelines on sponsors, including concerns regarding the time required to complete the review and rulemaking process. For each step in the TEA process, FDA attempted to determine a timeline that is achievable, consistent with timelines for similar FDA activities in other contexts to the extent possible (*e.g.,* NDA process timelines, general rulemaking experience), consistent with the Agency's priorities and resources, and that reasonably takes into consideration the interests of the public (in safe and effective OTC drug products) and sponsors (in a timely and efficient review process). For some steps, this resulted in FDA setting a shorter timeline than it had previously estimated for the step. For example, the proposed timeline for the eligibility determination step (proposed new § 330.15(c)(1)) is 180 days from receipt of a TEA, which is roughly half the time estimated by FDA for this step in a 2011 guidance to industry (Ref. 1).

Eligibility Determination

With respect to the eligibility determination (§ 330.15(c)(1)), FDA is proposing to review and issue a notice of eligibility or post to the docket a letter of ineligibility within 180 days of receipt of a TEA, which FDA considers to be a reasonable timeline, taking into consideration Agency priorities and resources. As stated previously, in a 2011 final guidance to industry, FDA previously estimated a 1-year timeframe for taking this action (Ref. 1).

Filing Determination

FDA is proposing to issue a filing determination within 90 days of submission by the sponsor of a safety and effectiveness data submission, which is defined in proposed § 330.14(a), in part, as a submission that the sponsor has confirmed it considers to be complete (*i.e.,* contains all data and information required under § 330.14(f)). While this timeline is 30 days longer than the filing provisions in 21 CFR 314.101 for NDAs and ANDAs, we anticipate that the filing review of a safety and effectiveness data submission for a nonprescription active ingredient or other condition may require more time than an NDA or ANDA review because the submission may consist of data and information from a wider variety of sources, with possibly a greater reliance on certain sources (*e.g.,* published literature).

Rulemaking and Feedback Letter

Notice and comment rulemaking is generally a lengthy and multistep process (Ref. 2). The timelines in this proposed rule are consistent with the length of time typically required for other rulemaking, and reflect the amount of time FDA anticipates will be required for the reviews of safety and effectiveness data submissions and related rulemaking.

Major steps for FDA rulemaking generally include determination that a rule is needed and what the rule should say; drafting, reviewing, and finalizing the proposed rule; publishing the proposed rule; a public comment period and review of the comments; revising the proposed rule as appropriate; reviewing the draft final rule and finalizing it, and publishing the final rule in the **Federal Register**.

As noted previously, rulemaking is often a lengthy process, and the OTC Drug Review process (of which the TEA process is a part) offers additional rulemaking challenges, such as were discussed in a public meeting on OTC process reform held by FDA in 2014 ("Over-The-Counter Drug Monograph System—Past, Present and Future; Public Hearing," 79 FR 10168, February 24, 2014; Docket No. FDA–2014–N–0202). Additional information, such as the hearing transcript, is available at *http://www.fda.gov/Drugs/NewsEvents/ucm380446.htm.* For TEA active ingredients and other conditions, the timelines for rulemaking involve conducting the scientific review, making a GRASE determination, and drafting and finalizing the rule for publication in the **Federal Register**. FDA estimates that initial scientific review of a complete safety and effectiveness data submission, including for new molecular entities that have never been marketed in the United States, will take approximately 730 days (generally 24 months). In addition to conducting this comprehensive review, the timeline may also include other activities, such as convening an advisory committee (or, under rare circumstances, an advisory review panel under § 330.10) and meeting with sponsors.

If the active ingredient or other condition is initially determined not to be GRASE for OTC use in the United States, FDA will also issue a feedback letter within this 730-day (generally 24-month) timeline. The feedback letter may identify the specific gaps in the data or information necessary to make a GRASE determination, and it provides the sponsor with time before the NPRM is published that could be used to begin collecting the data or information required for potential inclusion in a monograph. We note that a feedback letter reflects the Agency's initial determination. If FDA does not issue a feedback letter, it does not guarantee that we will ultimately determine that an ingredient is GRASE and not misbranded.

FDA proposes to issue an NPRM within 1,095 days (generally 36 months) from the date of filing (as defined in proposed § 330.15(a)(6)). For an active ingredient or other condition that is initially determined to be GRASE, FDA would issue a proposed rule to include the condition in the appropriate OTC monograph. For an active ingredient or other condition that is initially determined not to be GRASE, FDA would issue a proposed rule to include the condition in 21 CFR 310.502 (the regulation listing drugs that have been accorded new drug status through rulemaking and must be approved under section 505 of the FD&C Act before marketing). In general, FDA intends to close the public comment period for the proposed rule at 90 days, unless a request to defer further rulemaking to allow the submission of new safety or effectiveness data to the record is granted.

FDA is proposing to issue a final rule within 912 days (generally 30 months) of the closing of the comment period for the proposed rule. During this 912-day time period, FDA will review and consider any new data, information, and public comments submitted to the docket and draft and publish a final regulation.

Timelines for FDA review and action for sunscreen active ingredients under sections 586B and 586C of the FD&C Act, as amended by the SIA, are generally shorter than those in this proposed rule. The most notable differences are the timelines for proposed and final GRASE determinations which, under the SIA requirements for sunscreen active ingredients, are made through an order process rather than a rulemaking process. The order process eliminates some of the requirements of rulemaking that are time-consuming and resource intensive.

A 2009 Government Accountability Office (GAO) report (Ref. 3) examined, among other things, how long agencies, including FDA, take to issue rules. For the 16 case studies, the report found significant variation in time to complete rulemaking, with an average of about four years and a range of one to nearly 14 years. Factors that influenced the time needed to issue a rule included the complexity of the issues, Agency priorities, and the amount of internal and external review required (Ref. 3 at p. 19).

In summary, based on the type of data typically submitted in a TEA, along with the potential variability in the content and formatting of that submission, and because of the complex scientific review required to determine if an active ingredient or other condition is GRASE for OTC use, the possible use of an advisory committee, and the requirements for the rulemaking process itself, FDA considers the timelines put forth in this proposed rule to be reasonable, taking into consideration Agency priorities and resources. As described in further detail in the paragraphs that follow, if a TEA and the related safety and effectiveness data submission are straightforward, well-organized, and complete, FDA may be able to take action within shorter timeframes than proposed in this rule.

As stated previously, under section 586F(b)(2)(A) of the FD&C Act, the timelines established in the regulations required under that section could vary based on the content, complexity, and format of the submission. FDA considered a number of timeline options. Ultimately, FDA determined that instead of setting multiple proposed timelines for submissions of varying content, complexity, and format, it would be more efficient and sensible to set one general timeline for the review of non-sunscreen TEA conditions that accommodates anticipated variation among submissions. There is likely to be some variation in how quickly each submission is reviewed, because each will present a unique set of data and each review will occur in the context of multiple ongoing FDA activities and priorities. This may result in a review step taking less time than proposed in § 330.15(c) (for example, if a submission is well-organized, complete when submitted, and straightforward). In unusual circumstances, a review or rulemaking step may require a longer time than proposed in § 330.15(c) (*e.g.,* an unusually high volume of TEAs submitted, an especially complex new ingredient or other condition, or a public health emergency that diverts Agency resources). However, FDA would endeavor to meet the proposed timelines in § 330.15(c) for all submissions, and any missed timelines would be reflected in the metrics set forth in proposed § 330.15(b). In summary, the provisions in § 330.15(c) provide sponsors and the public with consistent timeframes for expected Agency action. In the paragraphs that follow, we discuss some practical examples of how certain factors might be expected to impact FDA review of a non-sunscreen TEA condition:

○ Content

The quantity and quality of submitted data can generally impact FDA's review. If a TEA or safety and effectiveness data submission includes all the information that is required and all information that the sponsor wishes to have considered in the initial submission to FDA, it is likely possible to complete review of the TEA or safety and effectiveness data submission more quickly than if it has poor quality data, if FDA finds that clarification or additional data is needed, or if the sponsor submits additional spontaneous data supplements during the substantive review.

○ Complexity

Complexity, including, among other things, the nature of the active ingredient or other condition that is the subject of the TEA and the status of the monograph for the therapeutic category (*i.e.,* final, tentative, or new) may also impact FDA's review. For example, review of a TEA and safety and effectiveness data submission for an active ingredient that has not previously been evaluated under the monograph for any use would likely be more complex than for an ingredient that is the subject of a GRASE determination in another monograph category. In addition, a review that involves a new technology would be more complex than one that does not.

The OTC monograph status for the therapeutic category (final, tentative, or new) and the U.S. Pharmacopeia (USP) monograph status (whether establishment of a USP monograph is required or not) may each affect the time required for review and rulemaking, in that addition of an active ingredient or other condition to a final OTC monograph once the GRASE determination is made would generally be faster than working with a tentative or new OTC monograph. Also, because a USP monograph for the ingredient is required before FDA can issue a final rule adding an active ingredient to an OTC monograph (§ 330.14(i)), the USP monograph status may lengthen the review and rulemaking time.

Finally, if FDA determines that an advisory committee or an advisory review panel is appropriate (*e.g.,* for a particularly complex new issue), that process could increase the time required to complete the review, particularly if the committee's recommendations raised additional issues to review.

○ Format

The format including, among other things, whether a TEA or safety and effectiveness data submission is well-organized or poorly-organized, whether some or all of the information is submitted in electronic format, etc., could also impact FDA's review. We note that FDA recently issued draft guidance for industry regarding the format and content of data submissions for nonprescription sunscreen active ingredients (Ref. 4). A well-formatted TEA can generally be reviewed more quickly and efficiently than a poorly-organized TEA. In addition, review could take longer (or result in a refusal to file) if a safety and effectiveness data submission is disorganized with a structure that does not facilitate review for completeness, if there are electronic submissions that cannot be opened or that cannot be readily navigated (*e.g.,* hyperlinks do not operate), or if there are data tabulations or graphic displays that are not interpretable, inadequately labeled, or do not indicate data sources. These issues may arise, in particular, with regard to safety and effectiveness data submissions that are filed over protest.

3. Metrics (Proposed New § 330.15(b))

Section 586F(b) of the FD&C Act requires FDA to establish measurable metrics for tracking the extent to which the timelines set forth in the regulations are met (see proposed timelines under § 330.15(c)). FDA is proposing to maintain a publicly available posting of metrics for the review of TEAs and safety and effectiveness data submissions submitted under § 330.14 that are subject to the timelines under proposed § 330.15(a), and update the posting annually. The posting will contain the metrics listed in this section, as proposed in § 330.15(b), for submissions received during the previous calendar year.

- Number and percent of eligibility notices or ineligibility letters issued within 180 days of submission of a TEA (*i.e.,* for new TEAs submitted during the year, the number and percentage for which FDA issued either an eligibility notice or an ineligibility letter within 180 days).
- Number and percent of filing determinations issued within 90 days of submission of a safety and effectiveness data submission (*i.e.,* for safety and effectiveness data submissions received during the year, the number and percentage for which FDA issued a filing determination within 90 days).
- If applicable, number and percent of feedback letters issued within 730 days (generally 24 months) from the date of filing (*i.e.,* the number of feedback letters issued during the year, if any, and the number and percent of these that were issued within 730 days from the date of filing the safety and effectiveness data submission).
- Number and percent of notices for proposed rulemaking issued within 1,095 days (generally 36 months) from the date of filing (*i.e.,* the number of notices of proposed rulemaking issued during the year, if any, and the number and percent of these that were issued within 1,095 days from the date of filing).
- Number and percent of final rules issued within 912 days (generally 30 months) of closing of the docket of the proposed rulemaking (*i.e.,* the number of final rules issued during the year, if any, and the number and percent of these that were issued within 912 days of the closing of the docket of the proposed rulemaking). We note that if the docket is reopened, the 912 days will be measured from the date the reopened docket is closed.
- Total number of TEAs submitted under § 330.14; FDA may also post a total number of TEAs that have been submitted in all previous years.

For purposes of the metrics, a lack of FDA action in response to a triggering event in the previous calendar year will not be factored in unless the response was due in the previous calendar year. In other words, if a sponsor submits a TEA in October of the previous calendar year, and FDA has not yet issued a notice of eligibility or letter of ineligibility because 180 days has not elapsed by the end of the calendar year, under the proposed metrics, FDA would not consider the lack of response as missing the timeline. Whether FDA met the timeline or not would be reflected in the next year's metrics.

FDA intends to track these metrics and post them publically on the FDA Internet site. The Agency routinely uses its Internet site to post information and track progress and performance metrics on various initiatives (Ref. 5).

The Agency anticipates that the proposed metrics web posting will improve transparency by providing sponsors and the public with information that will enable them to quickly ascertain the number of TEAs that have been submitted to FDA, and the Agency's performance in meeting the proposed timelines. Over time, these measurements may also assist the Agency with resource planning and utilization.

B. Amendments to § 330.14 "Additional Criteria and Procedures for Classifying OTC Drugs as Generally Recognized as Safe and Effective and Not Misbranded"

FDA is proposing to revise § 330.14 to add new definitions and requirements. The new proposed definitions are primarily meant to clarify the beginning or ending of the timelines for FDA review and action as proposed in new § 330.15. The new proposed requirements include filing determination provisions under proposed new § 330.14(j) and "withdrawal of consideration" provisions under proposed new § 330.14(k), which are intended to make the TEA process more efficient for both sponsors and FDA.

1. Definitions (Proposed Revised § 330.14(a))

FDA is proposing new definitions that, in general, are intended to clarify the beginning or ending of the timelines for FDA review and action as proposed in § 330.15. FDA is adding these definitions to § 330.14 instead of proposed new § 330.15 because § 330.14 describes the TEA process to which these definitions apply. The definitions for "condition" and "botanical drug substance," proposed under § 330.14(a)(1) and (2) respectfully, are unchanged from the current definitions under § 330.14(a). FDA is proposing to add the following new definitions of terms that apply to § 330.14.

- FDA is proposing that the term "sponsor" mean the person (as defined in section 201(e) of the FD&C Act) that submitted a TEA under § 330.14(c). Because the TEA process involves a public rulemaking process, comments from other interested parties, such as additional safety and effectiveness data, may be submitted to the docket for a TEA condition. FDA is proposing this definition to make clear that the sponsor is the person that submitted the TEA and related safety and effectiveness data submission, and will be the recipient of certain letters communicating FDA decisions. Because this is a public process, such letters will also be posted publicly to the relevant docket.
- FDA is proposing that the term "time and extent application (TEA)" mean a submission by a sponsor under § 330.14(c), which will be evaluated by the Agency to determine eligibility of a condition for consideration in the OTC drug monograph system. FDA is proposing this definition to make clear the difference between a submission to FDA for the purposes of establishing that the condition has been marketed for a material time and to a material extent versus a submission to FDA for the purposes of establishing that the condition is GRASE.
- FDA is proposing that the phrase "safety and effectiveness data submission" mean a data package submitted by a sponsor that includes safety and effectiveness data and information under § 330.14(f) and that is represented by the sponsor as being a complete submission. FDA is proposing this definition to differentiate this type of submission from the TEA. It also clarifies that FDA will not begin its filing determination under § 330.14(j) unless the sponsor first asserts that the submission is complete.
- FDA is proposing that the phrase "date of filing" mean the date of the notice from FDA informing the sponsor that FDA has made a threshold determination that the safety and effectiveness data submission is sufficiently complete to permit a substantive review. For submissions filed over protest in accordance with § 330.14(j)(3), the date of filing is the date of the notice from FDA informing the sponsor that FDA has filed the submission over protest. This date will be no later than 30 days after the sponsor's request that FDA file the submission over protest. FDA is

proposing this definition to make clear the start of the timeframe for FDA review and action under § 330.15(c)(3) and (4).

- FDA is proposing that the term "feedback letter" mean a letter issued by the Agency in accordance with § 330.14(g)(4) that informs the sponsor and other interested parties who have submitted data under paragraph (f) of this section that a condition is initially determined not to be GRASE. FDA is proposing this definition to clarify the FDA action under § 330.14(g)(4) and the timeframe for such action under § 330.15(c)(3).

2. Filing Determination (Proposed New § 330.14(j))

FDA is proposing new requirements that specify certain filing determination requirements that are intended, in part, to help improve the content and format of a safety and effectiveness data submission. FDA is also proposing timelines related to these proposed new requirements. For example, submission criteria include factors such as whether the submission includes all required information, whether the submission is organized and formatted in a manner that allows FDA to readily determine if it is sufficiently complete to permit a substantive review, and whether the submission includes all required certifications.

The proposed new section also sets forth processes that apply whether the submission is accepted for filing, refused, or filed over protest. If the submission is filed, the date of filing, as defined in proposed § 330.14(a), represents the start of FDA's initial review for a GRASE determination, and triggers the start of timelines under proposed §§ 330.15(c)(3) and (4).

FDA believes that these proposed requirements would benefit both TEA sponsors and FDA, as well as potentially benefitting other interested parties. In FDA's experience, TEA-related submissions vary widely in their content and format and are sometimes difficult or extremely time-consuming and resource-intensive to review as submitted (*e.g.*, missing data; copies of articles in foreign languages without an accompanying translation; hyperlinks that do not work; data submitted piecemeal; data not organized in any discernable manner, such as a submission with no listing of contents, page numbers, data categories, etc.). The proposed new requirements would provide more clarity and certainty to sponsors as to the content and format of a safety and effectiveness data submission and would provide for FDA to let sponsors know early on in the process if there is missing material or a problematic format that could delay review. For FDA, the proposed new requirements would be expected to result in more complete and clear data submissions from sponsors, to allow FDA to more easily and quickly determine whether the submission is sufficiently complete to permit FDA to go forward with a substantive review, and to ensure that once FDA begins its substantive review, the data and other information necessary for a complete review are available. If the submission is not sufficiently complete to allow substantive review, the new requirements would provide a clear pathway to communicate this issue to sponsors via a filing determination, and to communicate what additional information or format changes are required. Because safety and effectiveness data submissions are posted to the public docket, once filed, a more complete submission may also benefit other interested parties. Among other things, it may be easier for non-sponsor interested parties to determine whether there is information not otherwise reflected in the docket that they would like to submit for FDA to consider in the GRASE determination.

We note that while the SIA did not require FDA to issue a regulation regarding filing determination criteria for safety and effectiveness data submissions under § 330.14, it did require FDA to issue draft and final guidance on the format and content of information submitted by a sponsor in support of a "request" under section 586A of the FD&C Act and a "pending request," which are related to sunscreens (see FD&C Act section 586D(a)(1)(A) and (B)). A notice of availability of the draft guidance on this topic was published in the **Federal Register** on November 23, 2015 (Ref. 4). When final, this guidance will provide the Agency's current thinking about the criteria for the content and format of the safety and effectiveness data submitted by the sponsor of a TEA for a nonprescription sunscreen active ingredient or related condition. As noted in the draft guidance, when finalized, parts of the general advice in that guidance about the content and format of sunscreen safety and effectiveness data submissions may also be useful to persons preparing submissions for non-sunscreen TEA conditions.

As stated earlier in this section, proposed § 330.14(j) sets forth criteria FDA would use in making a filing determination for a safety and effectiveness data submission, as well as timing and processes related to the determination. In particular, in § 330.14(j)(1), FDA proposes that after FDA receives a safety and effectiveness data submission, the Agency will determine whether the submission may be filed. The determination would be whether or not to accept the submission for filing, after an initial review of the submission regarding whether the submission contains the data and information required under § 330.14(f) in an acceptable format, and satisfies the other filing criteria under § 330.14(j)(4). The filing of a submission under proposed § 330.14(j)(2) would mean that FDA has made a threshold determination that the submission is sufficiently complete to permit a substantive review.

In § 330.14(j)(2), FDA proposes that the date of filing will begin the FDA timelines described in § 330.15(c)(3) and (4).

In § 330.14(j)(3), FDA proposes to describe the process for cases in which FDA refuses to file the safety and effectiveness data submission. If this happens, the Agency would notify the sponsor in writing and state the reason for the refusal under proposed § 330.14(j)(4). Proposed § 330.14(j)(3) provides the sponsor 30 days in which to request an informal conference with the Agency about whether the Agency should file the submission and sets forth the procedures if the sponsor wishes to file the submission over protest following the informal conference. Proposed § 330.14(j)(3) further provides that FDA will convene the informal conference within 30 days of the request from the sponsor. It also provides that if, within 120 days after the informal conference, the sponsor requests that FDA file the submission (with or without correcting the deficiencies), the Agency will file the safety and effectiveness data submission over protest under § 330.14(j)(2), notify the sponsor in writing, and review it as filed. The sponsor need not resubmit a copy of a safety and effectiveness data submission that is filed over protest.

In proposed § 330.14(j)(4), FDA describes the conditions under which FDA may refuse to file a safety and effectiveness data submission. These include a submission that:

○ Is incomplete because it does not contain information required under § 330.14(f) (if such information is not provided because it is not relevant, the submission must clearly identify and explain the omission);

○ Is not organized or formatted in a manner to enable the Agency to readily determine if it is sufficiently complete to permit a substantive review;

○ Does not contain a signed statement that the submission represents a complete safety and effectiveness data submission and that the submission includes all the safety and effectiveness data and information available to the sponsor at the time of the submission, whether positive or negative;

○ Does not contain an analysis and summary of the data and other supporting information, organized by clinical or nonclinical area;

○ Does not contain a supporting document summarizing the strategy used for literature searches, including search terms, sources, dates accessed and years reviewed;

○ Does not contain a reference list and copy of supporting information; or

○ Includes data or information relevant to the GRASE determination that is marked as confidential without a statement that the information may be released to the public (if the relevant data was produced and marked confidential by a third party, the sponsor would need to include a statement that the sponsor is authorized to make the information publicly available or include an authorization from the third party permitting the information to be publicly disclosed).

In addition, the following four filing determination factors relate to requirements under other sections of the regulations. FDA may refuse to file a safety and effectiveness data submission if the submission:

○ Does not contain either a complete environmental assessment or information supporting a categorical exclusion under part 25 (see 21 CFR part 25, "Environmental impact considerations");

○ Does not contain a statement for each nonclinical laboratory study that it was conducted in compliance with part 58 requirements (see 21 CFR part 58, "Good laboratory practice for nonclinical laboratory studies") (or a statement of reasons for the noncompliance);

○ Does not contain a statement for each clinical investigation involving human subjects that it was conducted in compliance with part 56 institutional review board regulations (see 21 CFR part 56, "Institutional Review Boards") or was not subject to those regulations, and that it was conducted in compliance with part 50 informed consent regulations (see 21 CFR part 50, "Protection of human subjects"); or

○ Does not include required part 54 financial certification and disclosure statements (see 21 CFR part 54, "Financial disclosure by clinical investigators").

3. Withdrawal of Consideration of a TEA or Safety and Effectiveness Data Submission (Proposed New § 330.14(k))

The Agency is also proposing to add withdrawal provisions to new § 330.14(k). These proposed provisions acknowledge that a sponsor may request withdrawal of consideration of a TEA or safety and effectiveness data submission. In addition, inaction by a sponsor in certain circumstances may be deemed by FDA as a request for withdrawal of consideration (*e.g.*, prolonged failure of a sponsor to submit any safety and effectiveness data after receipt of an NOE, failure of a sponsor to respond to FDA communications). These proposed requirements are expected to help provide clarity on the status of TEAs and safety and effectiveness data submissions, and the effect of a withdrawal of consideration on the docket. They would also permit FDA to suspend work on those TEAs or safety and effectiveness data submissions that are no longer being pursued by the sponsor and for which FDA does not believe that the GRASE determination should go forward.

The Agency believes that the proposed provisions on withdrawal of consideration would allow the Agency to better allocate resources for the review of TEA conditions than the current process. Based on past experience with the OTC monograph process, FDA has found that following an Agency action, a sponsor may not respond to a request for data from FDA. For example, the Agency issued an NOE and request for safety and effectiveness data in 2005 for a TEA active ingredient (70 FR 72447, December 5, 2005) and to date, FDA has not received data or a response from the sponsor. Without an established deadline for submitting data or otherwise responding to an Agency request, a sponsor may never submit the requested data and a TEA condition may remain unresolved. To better utilize FDA resources as well as to address the withdrawal of consideration of a TEA or a safety and effectiveness data submission, the Agency is proposing to amend § 330.14 to add paragraph (k) to address such withdrawal of consideration.

In § 330.14(k)(1), we propose that FDA may withdraw consideration of a TEA or safety and effectiveness data submission if: (1) The sponsor requests that its submission be withdrawn from consideration, or (2) FDA deems the submission to be withdrawn from consideration due to the sponsor's failure to act on the submission or failure to respond to communications from FDA. For purposes of this provision, withdrawal of consideration of a TEA would include the withdrawal of consideration of a TEA condition that had been found to be eligible, but for which a safety and effectiveness data submission is not received by the Agency. If a sponsor requests withdrawal of consideration for its TEA or safety and effectiveness data submission, FDA generally intends to stop its review. However, we note that while FDA may withdraw consideration of a TEA or safety and effectiveness determination, we may determine not to do so in some cases. For example, if FDA has already issued a proposed rule that tentatively determines that the active ingredient or other condition is GRASE for OTC use, or is not GRASE for OTC use, FDA may continue to rely on the information submitted to the docket and proceed to issue a final rule.

In § 330.14(k)(2), we propose that FDA will notify the sponsor of a submission that FDA intends to deem withdrawn under paragraph (k)(1)(ii), and that the sponsor will then have 30 days from the date of the notice to request that FDA not withdraw consideration of the TEA or safety and effectiveness data submission and request additional time needed to submit relevant data and information. For example, a sponsor may request that FDA not withdraw consideration of a safety and effectiveness data submission to allow the submission of new safety or effectiveness data to the record if the sponsor needs additional time to conduct a study and submit the data. If, within 30 days of FDA's notice, the sponsor requests that FDA not withdraw consideration under proposed § 330.14(k)(1)(ii), we will continue to consider the submission. If we continue to consider the submission, that does not preclude the possibility of withdrawing consideration under § 330.14(k)(1) at a later time. FDA recommends that sponsors keep FDA apprised of the anticipated timing for submission of requested data to facilitate the review process and better utilize FDA resources.

In § 330.14(k)(3), FDA proposes to clarify that if consideration of a TEA or safety and effectiveness data submission is withdrawn, information that has been posted to the public docket for the TEA at the time of the withdrawal (such as an NOE or a safety and effectiveness data submission that has been accepted for filing and posted to the docket) will remain on the public docket. The TEA process is primarily a public process and withdrawal of consideration of a TEA or safety and effectiveness data submission will not cause previously public information to be removed from the docket. We also note that the original sponsor or other interested parties may wish to pursue review of the active ingredient or other condition at some point in the future. In that case, a new safety and effectiveness data submission may be submitted for the same active ingredient or other condition after consideration of the original submission has been withdrawn. If the Agency has already issued an NOE that determined that the active ingredient or other condition is eligible for review under the TEA process, another interested party may submit safety and effectiveness data for the eligible condition for the Agency's review.

In § 330.14(k)(4), FDA proposes that if a TEA or safety and effectiveness data submission being reviewed in accordance with § 330.15 is withdrawn, the timelines under § 330.15(c) and the metrics under § 330.15(b) no longer apply.

4. Minor Changes to § 330.14 for Clarity and Consistency

FDA is proposing to reorganize paragraph (a) of § 330.14 to create an introductory paragraph that includes the current text under § 330.14(a), except for the definitions of "condition" and "botanical drug substance," which would be moved to the proposed definitions section in § 330.14(a). FDA is proposing to eliminate the paragraph heading "introduction," and in its place, propose the paragraph heading "definitions" and a statement that the definitions that follow apply to this section and § 330.15. Under this new heading, FDA is proposing to include the definitions and current text for the terms "condition" and "botanical drug substance." FDA is also proposing to add to the end of the introductory paragraph of § 330.14 a sentence stating that § 330.15 sets forth timelines for FDA review and action.

FDA is proposing several minor amendments to § 330.14(f) for clarity and for consistency with the OTC monograph regulations under § 330.10.

- FDA is proposing to revise paragraph (f) to use terminology consistent with the new definition in § 330.14(a)(5) for "safety and effectiveness data submission" when referring to the data package submitted by the sponsor.
- FDA is proposing to revise the first sentence and add the second sentence to differentiate between, in the NOE, requesting the safety and effectiveness data submission from the sponsor, and requesting data and views from other interested parties.
- FDA is proposing to add a sentence that references the new filing determination requirements at proposed new § 330.14(j) and makes clear that the safety and effectiveness data submission must be sufficiently complete to be filed by the Agency under proposed paragraph (j)(2).
- FDA is proposing to add a sentence that references the requirements for compliance with good laboratory practices, institutional review board, informed consent, and financial certification or disclosure statement requirements, under § 330.10(c), (e), and (f), and makes clear that those requirements also apply to the safety and effectiveness data and information submitted under this paragraph. This proposed sentence does not impose new requirements. The sentence was added for clarity and consistency with § 330.10.

FDA is proposing to add the word "feedback" prior to the word "letter" in the first sentence of § 330.14(g)(4) to use terminology consistent with the proposed new definition for "feedback letter" in § 330.14(a)(7).

VI. Proposed Effective Date

The SIA directs the Agency to issue a final rule regarding the timelines and metrics described in section 586F(b) of the FD&C Act within 27 months after the enactment of the SIA (by February 26, 2017). The SIA also requires that the final rule be published not less than 30 calendar days before the effective date of the regulation. Consequently, the final rule implementing the timeline and metrics provisions of section 586F(b) will become effective 30 calendar days after the date of the final rule's publication in the **Federal Register**.

Beginning on that date, the timelines and metrics set forth in the regulation will apply to the review of TEAs and safety and effectiveness data submissions to which that regulation is applicable, and any amended provisions of § 330.14 will apply to the TEA process under that regulation.

VII. Economic Analysis of Impacts

A. Introduction

We have examined the impacts of the proposed rule under Executive Order 12866, Executive Order 13563, the Regulatory Flexibility Act (5 U.S.C. 601–612), and the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4). Executive Orders 12866 and 13563 direct us to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity). We have developed a comprehensive Economic Analysis of Impacts that assesses the impacts of the proposed rule. We believe that this proposed rule is not a significant regulatory action as defined by Executive Order 12866.

The Regulatory Flexibility Act requires us to analyze regulatory options that would minimize any significant impact of a rule on small entities. Because this proposed rule does not impose significant new economic burdens on any entity, we propose to certify that the proposed rule will not have a significant economic impact on a substantial number of small entities.

The Unfunded Mandates Reform Act of 1995 (section 202(a)) requires us to prepare a written statement, which includes an assessment of anticipated costs and benefits, before proposing "any rule that includes any Federal mandate that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100,000,000 or more (adjusted annually for inflation) in any one year." The current threshold after adjustment for inflation is $144 million, using the most current (2014) Implicit Price Deflator for the Gross Domestic Product. This proposed rule would not result in an expenditure in any year that meets or exceeds this amount.

In table 1, we provide the Regulatory Information Service Center/Office of Information and Regulatory Affairs Consolidated Information System accounting information.

TABLE 1—ECONOMIC DATA: COSTS AND BENEFITS STATEMENT

Category	Primary estimate	Low estimate	High estimate	Units year dollars	Discount rate (%)	Period covered (yrs.)	Notes
Benefits:							
Annualized					7		
Monetized					3		
$millions/year							
Annualized					7		
Quantified					3		
Qualitative	The proposed rule would improve the TEA review process by establishing timelines and clarifying requirements and increase the predictability of the process.						
Costs:							
Annualized	$0.00	$0.00	$0.00	2015	7	10	
Monetized	0.00	0.00	0.00	2015	3	10	
$millions/year							
Annualized					7		
Quantified					3		
Qualitative							
Transfers							
Federal					7		
Annualized Monetized					3		
$millions/year							
From/To	From:			To:			
Other					7		
Annualized Monetized					3		
$millions/year							
From/To	From:			To:			
Effects							

State, Local, and/or Tribal Government: No effects
Small Business: No effects
Wages: No effect
Growth: No effect

B. Summary

1. Baseline Conditions

We regulate nonprescription drug products under two primary pathways: (1) The new drug application (NDA) process, described in 21 CFR part 314; or (2) the nonprescription (over-the-counter or OTC) drug monograph process, described in part 330. There are important differences between these two pathways. Under the NDA process, the sponsor of an application must submit to us nonclinical and clinical data that supports the safety and effectiveness of its drug product, and we must review and approve the application before the sponsor can market such product. By contrast, OTC drug monographs are regulations describing conditions (§ 330.14 defines condition as an active ingredient or botanical drug substance (or combination of both), dosage form, dosage strength, or route of administration marketed for a particular specific OTC use) that certain OTC drugs (such as antacids) must meet to be considered as GRASE and not misbranded. In contrast with the application pathway, once a sponsor submits safety and effectiveness data to amend a monograph (which is posted to a public docket), the data are public. Drug products that comply with an applicable OTC drug monograph and other applicable regulations may be marketed without an NDA.

Initially, active ingredients and other conditions that were not marketed in the United States before the inception of the OTC Drug Review in 1972 were not eligible for review under the OTC drug monograph process. However, the TEA process, established by regulations finalized in 2002 (21 CFR 330.14), expanded the scope of this OTC drug review. The TEA process offers a pathway for OTC conditions to be marketed under an OTC drug monograph. OTC conditions can include newer active ingredients that previously had no U.S. marketing history, or that were marketed in the United States after the OTC drug review began. Active ingredients and other conditions that satisfy the TEA eligibility requirements are subject to the same safety, effectiveness, and labeling standards that apply to other conditions under the OTC monograph process.

The TEA process requires multi-step, notice-and-comment rulemaking procedures before a new active ingredient or other condition is added to an OTC drug monograph. After determining that an active ingredient or other condition is eligible for consideration under the OTC monograph process, we issue a notice in the **Federal Register** announcing the TEA determination and requesting safety and effectiveness data for the proposed OTC use. Next, after reviewing data submitted to the docket, we issue a proposed rule to either include the condition in the appropriate OTC drug monograph or, if the condition is initially determined not to be GRASE for OTC use, include it in § 310.502, which would require the sponsor to seek approval under the NDA pathway to market the condition. The proposed rule allows for public comments and for sponsors and other interested parties to submit additional data for safety and effectiveness. If a monograph is amended, by publishing a final rule, an OTC condition that complies with the OTC monograph and the general requirements for OTC drugs may be marketed in the United States without an NDA (examples of other general requirements include requirements to comply with Current Good Manufacturing Practice, to register and list products, to use drug facts labeling, etc.).

Although our multi-step TEA process allows sponsors to learn about the progress of our review of an application (for example when an NOE is issued, and if a feedback letter is issued), there are no established timelines to review applications or for sponsors to submit data. The lack of timelines can create unpredictability for interested parties because they may lack key information. For example, they may not know: (1) Whether the safety and effectiveness data submitted is sufficient or in the right format for us to conduct a substantive review; (2) when they need to submit new information; or (3) when to expect our determinations regarding eligibility or other feedback. The unpredictability in the process could result in sponsors not performing a required action within reasonable time for our review, performing unnecessary actions (examples of unnecessary actions may include collecting unnecessary or inadequate data, performing tests or studies that do not contribute to data needed by us to make a GRASE determination), or creating unnecessary effort for us and for them. For example, if a TEA remains inactive for a significant amount of time, scientific knowledge may evolve thus creating the need to amend the original TEA. Without specific timelines sponsors may not know whether their initial data submission was insufficient to review, was sufficient but is under review, or whether we require additional information. In addition, without specific timelines, we don't know if sponsors intend to submit additional data or whether they do not intend to pursue their application any further.

2. Purpose of This Proposed Rule

This proposed rule complies with certain mandates of the Sunscreen Innovation Act (Pub. L. 113–195), enacted in November 2014. In particular, the proposed rule would establish timelines and metrics for review of TEAs for non-sunscreen OTC drug products. Specific timelines applicable to non-sunscreen TEA conditions would be added in a new section to Title 21 of the CFR, § 330.15. The first proposed timeline is to issue a Notice of Eligibility or a post a letter of ineligibility to the TEA docket within 180 days of submission of a TEA. The second proposed timeline is to issue a filing determination within 90 days of receipt of a complete safety and effectiveness data submission from the sponsor once such sponsor has confirmed that it considers the submission to be complete. If we initially determine the active ingredient or other condition not to be GRASE, we will inform sponsors and interested parties within 730 days from the date of filing as defined in proposed § 330.14(a). The next proposed timeline is to issue a notice of proposed rulemaking (NPRM) within 1,095 days from the date of filing. Lastly, we propose to issue a final rule within 912 days of the closing of the docket of the proposed rulemaking.

The proposed rule would also amend the existing § 330.14 by: (1) Setting forth clear filing determination requirements with regard to the content and format of safety and effectiveness data submissions for TEAs, and by (2) addressing withdrawal of consideration of a TEA or safety and effectiveness data submission. These amendments would apply to all TEAs, and their goal is to provide early notification to sponsors whether their applications meet the filing requirements and to provide more clarity regarding withdrawal of a TEA-related submissions. The proposed amendments are intended to provide us with feedback from sponsors whether they intend to actively pursue their applications, and specify that we may withdraw consideration of a TEA or safety and effectiveness data submission in certain circumstances (such as at a sponsor's request or after prolonged inaction and lack of response to FDA communications). Finally, the proposed rule would also add definitions and make clarifying changes to the TEA regulation in § 330.14.

The proposed clarifications and establishment of timelines for the TEA process seek to dissipate uncertainties that may be preventing interested parties from submitting all the necessary data for us to grant final GRASE determination to existing TEA conditions that have been found to be eligible to be considered for inclusion in the OTC drug monograph system. Since the TEA review process became effective in 2002 (67 FR 3060 at 3074, January 23, 2002), we have received six TEAs for non-sunscreen active ingredients, including applications for dandruff, laxative, anti-gingivitis, and anti-acne products. However, we have not yet issued a proposed rule regarding whether any of these ingredients are GRASE under specified conditions of use. In fact, as of December 2015, the sponsor of one of these TEAs has not yet submitted safety and effectiveness data for our review.

3. Benefits

We lack data to quantify the potential benefits of the proposed rule. With the proposed rule, we expect the proposed timelines and data submission clarifications would make the TEA process, including establishing a new OTC drug monograph, more efficient and predictable, and improve communication between us and sponsors. Sponsors may benefit from knowing if additional data is needed and what optimal steps to take to receive a GRASE determination, and we would be able to bring resolution to TEA conditions. However, we do not know the monetary value of added predictability to sponsors. Also, because we have not yet issued tentative GRASE determinations for any of the non-sunscreen TEA conditions under review, as of December 2015, and because we do not know the increase in the probability of granting tentative GRASE determinations resulting from the proposed rule, we request comment on the potential benefits of the proposed rule.

4. Costs

This proposed rule supplements the TEA process. We expect the rule would create a minimal burden on sponsors from the possible cost associated with sending a meeting request letter to us in the event that we refuse to file a safety and effectiveness data submission and the sponsor would like to meet with us to discuss the decision, or the possible cost of calling or writing FDA to request that we not withdraw consideration of a submission in the event that we deem a submission withdrawn under proposed 330.14(k)(ii). Therefore, we anticipate no increase in annual recurring costs for either small or large sponsors.

We expect the six current sponsors would spend time reading and understanding the proposed rule, and this would take from about 6.5 hours to 13 hours. With an hourly wage rate of $133 including 100 percent overhead, each sponsor would incur one-time costs ranging from about $865 to $1,730. We also estimate that we would receive two additional TEAs annually, and thus during a 10-year horizon we estimate potentially twenty additional applicants would spend the time to read and understand the proposed rule. The present value of the total costs over 10 years ranges from about $17,000 to $35,000 with a 7 percent discount rate and from about $19,000 to $38,000 with a 3 percent discount rate. With a discount rate of 7 percent and 3 percent, we estimate that on average sponsors would incur less than $150 of annualized costs per year.

5. Impact on Small Entities

The Regulatory Flexibility Act requires a Regulatory Flexibility Analysis (RFA) unless the Agency can certify that the proposed rule would have no significant impact on a substantial number of small entities. The proposed rule would affect few entities. Moreover, we estimate one-time costs under $2,000 per entity, costs well below 0.01 percent of annual revenues for the smallest entities, and we propose to certify that the rule would not have a significant economic impact on a substantial number of small entities.

We invite comments on this analysis.

VIII. Analysis of Environmental Impact

We have determined under 21 CFR 25.31(a) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

IX. Paperwork Reduction Act of 1995

This proposed rule contains information collection provisions that are subject to review by OMB under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). The title, description, and respondent description of the information collection are given under this section with an estimate of the annual reporting burden. Included in the estimate is the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

We invite comments on these topics: (1) Whether the proposed collection of information is necessary for the proper performance of FDA's functions, including whether the information will have practical utility; (2) the accuracy of FDA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

Title: Food and Drug Administration Review and Action on Over-the-Counter Time and Extent Applications

Description: The proposed rule would amend FDA's TEA regulations to establish timelines and performance metrics for FDA's review of non-sunscreen TEAs and safety and effectiveness data submissions, as required by the SIA. FDA also proposes other changes to make the TEA process more efficient.

FDA has OMB approval (Control Number 0910–0688) for the information collection in 21 CFR 330.14, which specifies additional criteria and procedures by which OTC drugs that were initially marketed in the United States after the OTC Drug Review began and OTC drugs without any U.S. marketing experience may become eligible for consideration in the OTC drug monograph system.

The proposed rule would amend the TEA regulations in § 330.14 to make the process more efficient and to make conforming and clarifying changes. Proposed § 330.14(j) would clarify the requirements on content and format criteria for a safety and effectiveness data submission, and would provide procedures for FDA's review of the submissions and determination of whether a submission is sufficiently complete to permit a substantive review. Proposed § 330.14(j)(3) would describe the process for cases in which FDA refuses to file the safety and effectiveness data submission. Under proposed § 330.14(j)(3), if FDA refuses to file the submission, the Agency will notify the sponsor in writing, state the reason(s) for the refusal, and provide the sponsor with 30 days in which to submit a written request for an informal conference with the Agency about whether the Agency should file the submission. A sponsor's submission of a written request for an informal conference is not already approved under OMB Control Number 0910–0688. We estimate that approximately one sponsor ("number of respondents" in table 2, row 1) will annually submit to FDA approximately one request for an informal conference ("total annual responses" in table 2, row 1), and that preparing and submitting each request will take approximately one hour for each sponsor ("average burden per response" in table 2, row 1).

Under proposed § 330.14(j)(4)(iii), the safety and effectiveness data submission must contain a signed statement that the submission represents a complete safety and effectiveness data submission and that the submission includes all the safety and effectiveness data and information available to the sponsor at the time of the submission, whether positive or negative. A sponsor's signed statement is not already approved under OMB Control Number 0910–0688. We estimate that approximately two sponsors ("number of respondents" in table 2, row 2) will annually submit to FDA approximately two signed statements as described previously ("total annual responses" in table 2, row 2), and that preparing and submitting each signed statement will take approximately one hour for each sponsor ("average burden per response" in table 2, row 2).

Under proposed § 330.14(k)(1), FDA, in response to a written request from a sponsor, may withdraw consideration of a TEA submitted under § 330.14(c) or a safety and effectiveness data submission submitted under § 330.14(f). A sponsor's request that FDA withdraw consideration of a TEA or safety and effectiveness data submission is not already approved under OMB Control Number 0910–0688. We estimate that approximately one sponsor ("number of respondents" in table 2, row 3) will annually submit to FDA approximately one request ("total annual responses" in table 2, row 3), and that preparing and submitting each request will take approximately one hour for each sponsor ("average burden per response" in table 2, row 3).

Under proposed § 330.14(k)(2), a sponsor may request that FDA not withdraw consideration of a TEA or safety and effectiveness data submission. A sponsor's request for FDA to not deem its submission withdrawn from consideration is not already approved under OMB Control Number 0910–0688. We estimate that approximately one sponsor ("number of respondents" in table 2, row 4) will annually submit to FDA approximately one request ("total annual responses" in table 2, row 4), and that preparing and submitting each request will take approximately two hours for each sponsor ("average burden per response" in table 2, row 4).

FDA estimates the burden of this information collection as follows:

TABLE 2—ESTIMATED ANNUAL REPORTING BURDEN [1]

21 CFR Section	Number of respondents	Number of responses per respondent	Total annual responses	Average burden per response	Total hours
330.14(j)(3)—Sponsor request for informal conference on FDA's refusal to file	1	1	1	1	1
330.14(j)(4)(iii)—Sponsor's signed statement that the submission is complete	2	1	2	1	2
330.14(k)(1)—Sponsor request for FDA to withdraw consideration of a TEA or safety and effectiveness data submission	1	1	1	1	1
330.14(k)(2)—Sponsor request for FDA to not deem its submission withdrawn from consideration	1	1	1	2	2

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

In compliance with the PRA (44 U.S.C. 3507(d)), we have submitted the information collection requirements of this proposed rule to OMB for review. Interested persons are requested to send comments on this information collection to the Office of Information and Regulatory Affairs, OMB (see **ADDRESSES**).

X. Federalism

We have analyzed this proposed rule in accordance with the principles set forth in Executive Order 13132. Section 4(a) of the Executive order requires agencies to "construe . . . a Federal statute to preempt State law only where the statute contains an express preemption provision or there is some other clear evidence that the Congress intended preemption of State law, or where the exercise of State authority conflicts with the exercise of Federal authority under the Federal statute." The sole statutory provision giving preemptive effect to the proposed rule is section 751 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 379r).

We believe that the preemptive effect of this proposed rule, if finalized, would be consistent with Executive Order 13132. Through the publication of this proposed rule, we are providing notice and an opportunity for State and local officials to comment on this rulemaking.

XI. References

The following references are on display in the Division of Dockets Management (see **ADDRESSES**) and are available for viewing by interested persons between 9 a.m. and 4 p.m., Monday through Friday; they are also available electronically at *http://www.regulations.gov*. FDA has verified the Web site addresses, as of the date this document publishes in the **Federal Register**, but Web sites are subject to change over time.

1. FDA, Guidance for Industry, "Time and Extent Applications for Nonprescription Drug Products," September 2011, available at *http://www.fda.gov/downloads/Drugs/GuidanceComplianceRegulatoryInformation/Guidances/UCM078902.pdf*.

2. Office of the Federal Register, "A Guide to the Rulemaking Process," 2011, available at *https://www.federalregister.gov/uploads/2011/01/the_rulemaking_process.pdf*.

3. GAO, "Federal Rulemaking, Improvements Needed to Monitoring and Evaluation of Rules Development as Well as to the Transparency of OMB Regulatory Reviews," April 2009 (GAO–09–205), available at *http://www.gao.gov/assets/290/288538.pdf*.

4. FDA, Draft Guidance for Industry, "Nonprescription Sunscreen Drug Products: Content and Format of Data Submissions To Support a GRASE Determination Under the Sunscreen Innovation Act," November 2015, available at *http://www.fda.gov/downloads/Drugs/GuidanceComplianceRegulatoryInformation/Guidances/UCM473772.pdf*.

5. Examples of FDA internet pages that include progress reports or other metrics include: FDA's FDA–TRACK Web page, *http://www.fda.gov/AboutFDA/Transparency/track/ucm195010.htm;* FDA's "Sunscreen Innovation Act (SIA)" Web page, *http://www.fda.gov/Drugs/GuidanceComplianceRegulatoryInformation/ucm434782.htm*, and FDA's "Rulemaking History for OTC Time and Extent Applications" Web page, *http://www.fda.gov/Drugs/DevelopmentApprovalProcess/DevelopmentResources/Over-the-CounterOTCDrugs/StatusofOTCRulemakings/ucm072455.htm*.

List of Subjects in 21 CFR Part 330

Over-the-counter drugs.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, we propose that 21 CFR part 330 be amended as follows:

PART 330—OVER-THE-COUNTER (OTC) HUMAN DRUGS WHICH ARE GENERALLY RECOGNIZED AS SAFE AND EFFECTIVE AND NOT MISBRANDED

■ 1. The authority citation for part 330 is revised to read as follows:

Authority: 21 U.S.C. 321, 351, 352, 353, 355, 360, 360fff–6, 371.

■ 2. Section 330.14 is amended as follows:

■ a. Redesignate paragraph (a) as introductory text, revise the newly redesignated introductory text, and add new paragraph (a);

■ b. Revise paragraphs (f) introductory text and (g)(4);

■ c. Add paragraphs (j) and (k).

The revisions and additions read as follows:

§ 330.14 Additional criteria and procedures for classifying OTC drugs as generally recognized as safe and effective and not misbranded.

This section sets forth additional criteria and procedures by which over-the-counter (OTC) drugs initially marketed in the United States after the OTC drug review began in 1972 and OTC drugs without any U.S. marketing experience can be considered in the OTC drug monograph system. This section also addresses conditions regulated as a cosmetic or dietary supplement in a foreign country that would be regulated as OTC drugs in the United States. Section 330.15 sets forth timelines for FDA review and action.

(a) *Definitions.* The definitions and interpretations contained in section 201 of the Federal Food, Drug, and Cosmetic Act and the following definitions of terms apply to this section and to § 330.15.

(1) *Condition* means an active ingredient or botanical drug substance (or a combination of active ingredients

or botanical drug substances), dosage form, dosage strength, or route of administration, marketed for a specific OTC use, except as excluded in paragraph (b)(2) of this section.

(2) *Botanical drug substance* means a drug substance derived from one or more plants, algae, or macroscopic fungi, but does not include a highly purified or chemically modified substance derived from such a source.

(3) *Sponsor* means the person that submitted a time and extent application (TEA) under paragraph (c) of this section.

(4) *Time and extent application (TEA)* means a submission by a sponsor under paragraph (c) of this section, which will be evaluated by the agency to determine eligibility of a condition for consideration in the OTC drug monograph system.

(5) *Safety and effectiveness data submission* means a data package submitted by a sponsor that includes safety and effectiveness data and information under paragraph (f) of this section and that is represented by the sponsor as being a complete submission.

(6) *Date of filing* means the date of the notice from FDA informing the sponsor that FDA has made a threshold determination that the safety and effectiveness data submission is sufficiently complete to permit a substantive review; or, if the submission is filed over protest in accordance with paragraph (j)(3) of this section, the date of filing is the date of the notice from FDA informing the sponsor that FDA has filed the submission over protest (this date will be no later than 30 days after the sponsor's request that FDA file the submission over protest).

(7) *Feedback letter* means a letter issued by the agency in accordance with paragraph (g)(4) of this section that informs the sponsor and other interested parties who have submitted data under paragraph (f) of this section that a condition is initially determined not to be generally recognized as safe and effective (GRASE).

* * * * *

(f) *Safety and effectiveness data submission.* The notice of eligibility shall request that the sponsor submit a safety and effectiveness data submission that includes published and unpublished data to demonstrate the safety and effectiveness of the condition for its intended OTC use(s). The notice of eligibility will also request data and views from other interested parties. These data shall be submitted to a docket established in the Division of Dockets Management and shall be publicly available for viewing at that office, except data deemed confidential under 18 U.S.C. 1905, 5 U.S.C. 552(b), or 21 U.S.C. 331(j). Data considered confidential under these provisions must be clearly identified. Any proposed compendial standards for the condition shall not be considered confidential. The safety and effectiveness data submission must be sufficiently complete to be filed by the agency under paragraph (j)(2) of this section. Safety and effectiveness data and other information submitted under this paragraph are subject to the requirements in § 330.10(c), (e), and (f). The safety and effectiveness data submission must include the following:

* * * * *

(g) * * *

(4) If the condition is initially determined not to be GRASE for OTC use in the United States, the agency will inform the sponsor and other interested parties who have submitted data of its determination by feedback letter, a copy of which will be placed on public display in the docket established in the Division of Dockets Management. The agency will publish a notice of proposed rulemaking to include the condition in § 310.502 of this chapter.

* * * * *

(j) *Filing determination.* (1) After FDA receives a safety and effectiveness data submission, the agency will determine whether the submission may be filed. The filing of a submission means that FDA has made a threshold determination that the submission is sufficiently complete to permit a substantive review.

(2) If FDA finds that none of the reasons in paragraph (j)(4) of this section for refusing to file the safety and effectiveness data submission apply, the agency will file the submission and notify the sponsor in writing. The date of filing begins the FDA timelines described in § 330.15(c)(3) and (4).

(3) If FDA refuses to file the safety and effectiveness data submission, the agency will notify the sponsor in writing and state the reason(s) under paragraph (j)(4) of this section for the refusal. The sponsor may request in writing, within 30 days of the date of the agency's notification, an informal conference with the agency about whether the agency should file the submission, and FDA will convene the meeting within 30 days of the request. If, within 120 days after the informal conference, the sponsor requests that FDA file the submission (with or without correcting the deficiencies), the agency will file the safety and effectiveness data submission over protest under paragraph (j)(2) of this section, notify the sponsor in writing, and review it as filed. The sponsor need not resubmit a copy of a safety and effectiveness data submission that is filed over protest.

(4) FDA may refuse to file a safety and effectiveness data submission if any of the following applies:

(i) The submission is incomplete because it does not contain information required under paragraph (f) of this section. If the submission does not contain required information because such information or data are not relevant to the condition, the submission must clearly identify and provide an explanation for the omission.

(ii) The submission is not organized or formatted in a manner to enable the agency to readily determine if it is sufficiently complete to permit a substantive review.

(iii) The submission does not contain a signed statement that the submission represents a complete safety and effectiveness data submission and that the submission includes all the safety and effectiveness data and information available to the sponsor at the time of the submission, whether positive or negative.

(iv) The submission does not contain an analysis and summary of the data and other supporting information, organized by clinical or nonclinical area, such as clinical efficacy data, clinical safety data, clinical pharmacology, adverse event reports, animal toxicology, chemistry data, and compendial status.

(v) The submission does not contain a supporting document summarizing the strategy used for literature searches, including search terms, sources, dates accessed and years reviewed.

(vi) The submission does not contain a reference list of supporting information, such as published literature, unpublished information, abstracts and case reports, and a copy of the supporting information.

(vii) The submission includes data or information relevant for making a GRASE determination marked as confidential without a statement that the information may be released to the public.

(viii) The submission does not contain a complete environmental assessment under § 25.40 of this chapter or fails to provide sufficient information to establish that the requested action is subject to categorical exclusion under § 25.30 or § 25.31 of this chapter.

(ix) The submission does not contain a statement for each nonclinical laboratory study that it was conducted in compliance with the requirements set forth in part 58 of this chapter, or, if it was not conducted in compliance with part 58 of this chapter, a brief statement of the reason for the noncompliance.

(x) The submission does not contain a statement for each clinical investigation involving human subjects that it was conducted in compliance with the institutional review board regulations in part 56 of this chapter, or was not subject to those regulations, and that it was conducted in compliance with the informed consent regulations in part 50 of this chapter.

(xi) The submission does not include financial certification or disclosure statements, or both, as required by part 54 of this chapter, accompanying any clinical data submitted.

(k) *Withdrawal of consideration.* (1) FDA may withdraw consideration of a TEA submission or a safety and effectiveness data submission if:

(i) The sponsor requests that its submission be withdrawn from consideration, or

(ii) FDA deems the submission to be withdrawn from consideration due to the sponsor's failure to act on the submission or failure to respond to communications from FDA.

(2) Before FDA deems a submission withdrawn under paragraph (k)(1)(ii) of this section, FDA will notify the sponsor of the submission. If, within 30 days from the date of the notice from FDA, the sponsor requests that FDA not withdraw consideration of the submission, FDA will not deem the submission to be withdrawn.

(3) If FDA withdraws consideration of a submission under paragraph (k)(1) of this section, FDA will post a notice of withdrawal to the docket. Information that has been posted to the public docket for the TEA at the time of the withdrawal (such as a notice of eligibility or a safety and effectiveness data submission that has been accepted for filing and posted to the docket) will remain on the public docket.

(4) If FDA withdraws consideration of a submission under paragraph (k)(1) of this section, the timelines under § 330.15(c) will no longer apply as of the date of withdrawal, and the submission will not be included in the metrics under § 330.15(b).

■ 3. Add § 330.15 to subpart B to read as follows:

§ 330.15 Timelines for FDA review and action on time and extent applications and safety and effectiveness data submissions.

(a) *Applicability.* This section applies to the review of a condition in a time and extent application (TEA) submitted under § 330.14 for consideration in the over-the-counter (OTC) drug monograph system. This section does not apply to:

(1) A sunscreen active ingredient or combination of sunscreen active ingredients, and other conditions for such ingredients, or

(2) A non-sunscreen active ingredient or combination of non-sunscreen active ingredients and other conditions for such ingredients submitted in a TEA under § 330.14 prior to November 27, 2014, subject to section 586F(a)(1)(C) of the Federal Food, Drug, and Cosmetic Act.

(b) *Metrics.* FDA will maintain and update annually, a publicly available posting of metrics for the review of TEAs and safety and effectiveness data submissions that are subject to the timelines in this section. The posting will contain the following information for tracking the extent to which the timelines set forth in paragraph (c) of this section were met during the previous calendar year.

(1) Number and percent of eligibility notices or ineligibility letters issued within 180 days of submission of a TEA;

(2) Number and percent of filing determinations issued within 90 days of submission of a safety and effectiveness data submission;

(3) If applicable, number and percent of feedback letters issued within 730 days from the date of filing;

(4) Number and percent of notices for proposed rulemaking issued within 1,095 days from the date of filing;

(5) Number and percent of final rules issued within 912 days of closing of the docket of the proposed rulemaking; and

(6) Total number of TEAs submitted under § 330.14.

(c) *Timelines for FDA review and action.* FDA will review and take an action within the following timelines:

(1) Within 180 days of submission of a TEA under § 330.14(c), FDA will issue a notice of eligibility or post to the docket a letter of ineligibility, in accordance with § 330.14(d) and (e).

(2) Within 90 days of submission by the sponsor of a safety and effectiveness data submission, FDA will issue a filing determination in accordance with § 330.14(j). The date of filing begins the FDA timelines in paragraphs (c)(3) and (4) of this section.

(3) Within 730 days from the date of filing, if the condition is initially determined not to be GRASE for OTC use in the United States, FDA will inform the sponsor and other interested parties who have submitted data of its determination by feedback letter in accordance with § 330.14(g)(4).

(4) Within 1,095 days from the date of filing of a safety and effectiveness data submission, FDA will issue a notice of proposed rulemaking to either:

(i) Include the condition in an appropriate OTC monograph(s), either by amending an existing monograph(s) or establishing a new monograph(s), if necessary; or

(ii) Include the condition in § 310.502 of this chapter.

(5) Within 912 days of the closing of the docket of the proposed rulemaking under paragraph (c)(4) of this section, FDA will issue a final rule.

Dated: March 29, 2016.

Leslie Kux,

Associate Commissioner for Policy.

[FR Doc. 2016–07612 Filed 4–1–16; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF THE TREASURY

Financial Crimes Enforcement Network

31 CFR Parts 1010 and 1023

RIN 1506–AB29

Amendments to the Definition of Broker or Dealer in Securities

AGENCY: Financial Crimes Enforcement Network ("FinCEN"), Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: FinCEN, a bureau of the Department of the Treasury, is proposing amendments to the definitions of "broker or dealer in securities" and "broker-dealer" under the regulations implementing the Bank Secrecy Act. This rulemaking would amend those definitions explicitly to include funding portals that are involved in the offering or selling of crowdfunding securities pursuant to section 4(a)(6) of the Securities Act of 1933. The consequence of those amendments would be that funding portals would be required to implement policies and procedures reasonably designed to achieve compliance with the Bank Secrecy Act requirements currently applicable to brokers or dealers in securities. The proposal to specifically require funding portals to comply with the Bank Secrecy Act regulations is intended to help prevent money laundering, terrorist financing, and other financial crimes.

DATES: Written comments on this Notice of Proposed Rulemaking ("NPRM") must be submitted on or before June 3, 2016.

ADDRESSES: Comments may be submitted, identified by Regulatory Identification Number (RIN) 1506–AB29, by any of the following methods:

- *Federal E-rulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.

Include RIN 1506–AB29 in the submission. Refer to Docket Number FINCEN–2014–0005.

- *Mail:* FinCEN, P.O. Box 39, Vienna, VA 22183. Include RIN 1506–AB29 in the body of the text.

Please submit comments by one method only. Comments submitted in response to this NPRM will become a matter of public record. Therefore, you should submit only information that you wish to make publicly available.

Inspection of comments: The public dockets for FinCEN can be found at Regulations.gov. **Federal Register** notices published by FinCEN are searchable by docket number, RIN, or document title, among other things, and the docket number, RIN, and title may be found at the beginning of the notice. FinCEN uses the electronic, Internet-accessible dockets at Regulations.gov as their complete, official-record docket; all hard copies of materials that should be in the docket, including public comments, are electronically scanned and placed in the docket. In general, FinCEN will make all comments publicly available by posting them on *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: FinCEN Resource Center at 1–800–767–2825 or 1–703–905–3591 (not a toll free number) and select option 3 for regulatory questions. Email inquiries can be sent to *frc@fincen.gov.*

SUPPLEMENTARY INFORMATION:

I. Statutory and Regulatory Provisions

The Currency and Foreign Transactions Reporting Act of 1970, as amended by the Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001 (Public Law 107–56) ("USA PATRIOT Act") and other legislation, which legislative framework is commonly referred to as the Bank Secrecy Act ("BSA"),[1] authorizes the Secretary of the Treasury ("Secretary") to require financial institutions to keep records and file reports that "have a high degree of usefulness in criminal, tax, or regulatory proceedings, or in the conduct of intelligence or counterintelligence activities, including analysis, to protect against international terrorism." [2] In addition, the Secretary is authorized to impose anti-money laundering ("AML") program requirements on financial institutions.[3] The Secretary has delegated to the Director of FinCEN the authority to implement, administer, and enforce compliance with the BSA and its implementing regulations.[4]

The BSA was amended by the Annunzio-Wylie Anti-Money Laundering Act of 1992 (Pub. L. 102–550) ("Annunzio-Wylie").[5] Annunzio-Wylie authorizes the Secretary to issue regulations requiring financial institutions to implement programs to guard against money laundering, maintain records considered useful in criminal, tax, or regulatory investigations or proceedings, and report suspicious transactions.[6] When prescribing minimum standards for AML programs, FinCEN must "consider the extent to which the requirements imposed under [the AML program requirement] are commensurate with the size, location, and activities of the financial institutions to which such regulations apply." [7] Pursuant to these authorities, FinCEN has issued regulations requiring brokers or dealers in securities to report suspicious transactions and implement AML programs.[8]

II. Background Information

A. The Effect of the JOBS Act and the Securities and Exchange Commission Crowdfunding Rule on the Scope of the Definitions of Brokers or Dealers in Securities and Broker-Dealers Under the Implementing Regulations of the BSA

The Jumpstart Our Business Startups Act (the "JOBS Act"), enacted on April 5, 2012, establishes the foundation for a regulatory structure for startups and small businesses to raise funds by offering and selling securities through crowdfunding [9] without having to register the securities with the Securities and Exchange Commission ("SEC" or "Commission") or state securities regulators.[10] Crowdfunding is a new and evolving method to raise money using the Internet by seeking small individual contributions from a large number of people. The crowdfunding provisions of the JOBS Act were designed to help startups and small businesses raise funds by making relatively low-dollar offerings of securities less costly. They also permit Internet-based platforms known as "funding portals," acting as intermediaries, to facilitate the offer or sale of securities without having to register with the SEC as brokers.

Title III of the JOBS Act amends the Securities Act of 1933 and the Securities Exchange Act of 1934 to create a new exemption for offerings of crowdfunded securities.[11] Specifically, the JOBS Act amends section 4 of the Securities Act of 1933 to exempt issuers from the registration requirements of section 5 of that Act when they offer and sell up to $1 million in securities, provided that, among other things, individual investments do not exceed certain thresholds (*e.g.,* $2,000 to $100,000 in a 12-month period) based on the investor's annual income or net worth. Additionally, issuers must use the services of an intermediary that is either a broker registered with the SEC or a "funding portal" registered with the SEC.[12]

The JOBS Act also amends the Securities Exchange Act of 1934 to include a definition of funding portals in section 3(a)(80).[13] The JOBS Act defines a funding portal as any person acting as an intermediary in a transaction involving the offer or sale of securities for the account of others, solely pursuant to section 4(a)(6) of the Securities Act that does not: (i) Offer investment advice or recommendations; (ii) solicit purchases, sales, or offers to buy securities offered or displayed on its Web site or portal; (iii) compensate employees, agents, or other persons for such solicitation or based on the sale of securities displayed or referenced on its

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[1] The BSA is codified at 12 U.S.C. 1829b and 1951–1959, and 31 U.S.C. 5311–5314 and 5316–5332 and notes thereto, with implementing regulations at 31 CFR Chapter X. *See* 31 CFR 1010.100(e).

[2] 31 U.S.C. 5311.

[3] 31 U.S.C. 5318.

[4] Treasury Order 180–01 (Jul. 1, 2014).

[5] 31 U.S.C. 5318(g) was added to the BSA by section 1517 of the Annunzio-Wylie Act; it was expanded by section 403 of the Money Laundering Suppression Act of 1994 (the "Money Laundering Suppression Act"), Title IV of the Riegle Community Development and Regulatory Improvement Act of 1994, Public Law 103–325, to require designation of a single government recipient for reports of suspicious transactions. As amended by the USA PATRIOT Act, subsection (g)(1) states generally that "the Secretary may require any financial institution, and any director, officer, employee, or agent of any financial institution, to report any suspicious transaction relevant to a possible violation of law or regulation."

[6] Annunzio-Wylie Anti-Money Laundering Act, Title XV of the Riegle Community Development and Regulatory Improvement Act of 1994, Public Law 103–325; *See also* 31 U.S.C. 5318(g).

[7] See section 352(c) of Title III of the USA PATRIOT Act of 2001, Pub. L. 107–56, 115 Stat. 272, 322 (2001) (codified at 31 U.S.C. 5318(h)).

[8] 31 CFR 1023.320.

[9] Crowdfunding is the use of the Internet to raise money through small contributions from a large number of investors. Not all crowdfunding involves the offering or selling of securities, though in some instances it does. This NPRM is meant to address only instances in which crowdfunding involves facilitating an offer or sale of securities to raise money for a business pursuant to section 4(a)(6) of the Securities Act. For example, this NPRM is not addressing instances where crowdfunding is utilized to solicit donations from the general public or a targeted group.

[10] Public Law 112–106, 126 Stat. 306 (2012).

[11] *Id. See also* sections 4(a)(6) and 4A of the Securities Act of 1933 (15 U.S.C. 77a *et seq.*), and section 3(a)(80) of the Securities Exchange Act of 1934 (15 U.S.C. 78a *et seq.*).

[12] *Id.*

[13] *See* section 3(a)(80) of the Securities Exchange Act of 1934 (15 U.S.C. 78a *et seq.*).

Web site or portal; (iv) hold, manage, possess, or otherwise handle investor funds or securities; or (v) engage in such other activities as the SEC, by rule, determines appropriate.[14]

In addition, the JOBS Act adds new section 3(h) to the Securities Exchange Act of 1934, which requires the SEC to exempt, by rule, conditionally or unconditionally, a registered funding portal from the requirement to register with the SEC as a broker.[15] The funding portal would, however, remain subject to the SEC's examination, enforcement, and rulemaking authority. The funding portal also must become a member of a national securities association that is registered under section 15A of the Securities Exchange Act.[16] As required by the JOBS Act, the SEC issued a notice of proposed rulemaking ("Crowdfunding NPRM") on November 5, 2013 proposing the regulatory framework for intermediaries facilitating the offer or sales of crowdfunded securities,[17] which it finalized largely as proposed on October 30, 2015.[18]

Current BSA regulations at Part 1023 of Chapter X of Title 31 of the CFR (the Part that imposes the specific requirements to maintain an anti-money laundering program and to file suspicious activity reports) define "broker-dealers" by reference to persons "registered, or required to be registered, as a broker or dealer with the Commission under the Securities Exchange Act of 1934." [19] As described above, a registered funding portal would not be a person required to be registered as a broker with the Commission because a funding portal would be exempt from broker registration, and thus would not be subject to BSA regulations under the current BSA definition of "broker-dealers." In its Crowdfunding NPRM, the SEC sought to address this issue through its proposed rule 403(b). Specifically, the SEC proposed that "[n]otwithstanding [the exemption from registration as a broker or dealer in securities], for purposes of 31 CFR chapter X, a funding portal is 'required to be registered' as a broker or dealer with the Commission under the Exchange Act." [20] At the final stage of its Crowdfunding rulemaking, the SEC determined "that it would be more appropriate to work with other regulators to develop consistent and effective AML obligations for funding portals," and chose not to adopt proposed rule 403(b).[21] Now that the SEC has finalized its Crowdfunding rule exempting funding portals from having to register as brokers or dealers in securities, FinCEN is proposing this rulemaking to ensure that registered funding portals are subject to BSA regulations.

There are good reasons to ensure that funding portals are subject to BSA regulations. As the SEC has recognized, funding portals would continue to function as brokers regardless of the statutory provisions exempting them from registering as brokers under the Exchange Act.[22] Specifically, although the JOBS Act prohibits a funding portal from holding, managing, possessing, or handling customer funds or securities, a funding portal's business activity is essentially similar to that of introducing brokers, which typically do not accept cash from customers or maintain custody of customer securities,[23] but yet are subject to the BSA regulations. As such, funding portals raise at least the same degree of AML and counter financing of terrorism risk as some other broker-dealers registered with the SEC, and should be regulated commensurately under the BSA.

Moreover, as the SEC noted in its November 5, 2013 Crowdfunding NPRM, there is reason to "expect that funding portals would often facilitate offerings of microcap or low-priced securities, which may be more susceptible to fraud and market manipulation. We believe that imposing the monitoring and reporting requirements of the BSA on funding portals would establish a valuable oversight, prevention and detection mechanism." [24] In a 2010 published report, the Financial Action Task Force also identified low-priced and privately-placed securities as potential vehicles for laundering money.

These securities pose a money laundering risk because they are often used to generate illicit assets through market manipulation, insider trading, and fraud.[25] In addition, unlawfully acquired assets can be used to purchase these securities in order to resell them and create the appearance of legitimately sourced funds.[26] It is also possible that issuers relying on the exemption in section 4(a)(6) may be shell companies, which have been associated with a high risk of money laundering.[27] Congress recognized and expressed concern about these money laundering and financial crimes risks, which is why, in part, it chose to require that securities offered and sold in reliance on section 4(a)(6) be sold through a regulated intermediary.[28]

FinCEN believes that funding portals could play a critical role in detecting, preventing, and reporting money laundering and other illicit financing, such as market manipulation and fraud. As described above, funding portals should be subject to normal BSA obligations. A funding portal, like an introducing broker, is in the best position to know its customers, and to identify and monitor for suspicious and potentially illicit activity at the individual customer level, as compared to other required participants in the transaction such as the qualified third party, which may not see such activity given its less direct contact with individual customers.[29] FinCEN understands that the JOBS Act was designed to provide regulatory relief and ease the funding gap that startups and small businesses often face, while providing significant investor protections. But in addition to investor protections, any regulatory structure for securities-based crowdfunding through the Internet must also address the risk of money laundering and other financial crimes presented by the misuse of crowdfunding transactions. FinCEN agrees with the SEC that a funding portal engaging in the business of effecting securities transactions for the accounts of others through crowdfunding is acting as a broker-dealer, despite the exemption from registration under the Exchange Act that Congress directed the SEC to implement, and that this new type of broker or dealer in securities should be subject to supervision under the BSA regulation.

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[14] *Id.*

[15] *Id.* Generally, a third party that operates a Web site to effect the purchase and sale of securities for the account of others generally would, under existing regulations, be required to register with the Commission as a broker-dealer and comply with the laws and regulations applicable to broker-dealers.

[16] *Id.*

[17] *See* 78 FR 66428 (Nov. 5, 2013).

[18] *See* 80 FR 71387 (Nov. 16, 2015).

[19] 31 CFR 1023.100.

[20] *See* 78 FR 66428, 66484 (Nov. 5, 2013).

[21] *See* 80 FR 71387, 71471 (Nov. 16, 2015).

[22] See 78 FR 66428, 66483–66484.

[23] *See infra* note 20.

[24] *See*78 FR 66428, 66490–66491 (Nov. 5, 2013).

[25] *Id. See also* Financial Action Task Force ("FATF"), Money Laundering and Terrorist Financing in the Securities Sector 20–21 (Oct. 2009) ("FATF Typology") (discussing the money laundering risks associated with low priced securities, private issuers, and shell companies). As explained in the FATF Typology, illicit actors "can either use existing shares that are already publicly traded or start a shell company for the express purpose of engaging in those illicit activities. In addition, criminal organizations also have been known to use illicit assets generated outside the securities industry to engage in market manipulation and fraud."

[26] *See* 78 FR 66428, 66490–66491 (Nov. 5, 2013). "Moreover, criminal organizations can also initially invest in a private company that they can then use as a front company for commingling illicit and legitimate assets. They can then take this company public through an offering in the public securities markets, thus creating what appear to be legitimate offering revenues. Alternatively, criminal organizations can acquire a publicly traded company and use it to launder illicit assets." The FATF Typology further highlighted the risk of shell companies that, for example, "can be established to accept payments from criminal organizations for non-existent services. These payments, which appear legitimate, can be deposited into depository or brokerage accounts and either wire transferred out of a jurisdiction or used to purchase securities products that are easily transferable or redeemable."

[27] *See* 78 FR 66428, 66490–66491 (Nov. 5, 2013). *See also, e.g.,* Joint Release, Guidance on Obtaining and Retaining Beneficial Ownership Information, FIN–2010–G001 (Mar. 5, 2010) (noting that criminals, money launderers, tax evaders, and terrorists may exploit the privacy and confidentiality surrounding some business entities, including shell companies and other vehicles designed to conceal the nature and purpose of illicit transactions and the identities of the persons associated with them); Financial Crimes Enforcement Network, The Role of Domestic Shell Companies in Financial Crime and Money Laundering: Limited Liability Companies (Nov. 2006), *available at http://www.fincen.gov/news_room/rp/files/LLCAssessment_FINAL.pdf.*

[28] *See* 78 FR 66428, 66490–66491 (Nov. 5, 2013). *See also* 158 Cong. Rec. S1781 (daily ed. Mar. 19, 2012) (statement of former Sen. Carl Levin) ("Senior citizens, state securities regulators, and others worry that this will give rise to money laundering and fraud risks.").

For all of these reasons, in addition to the provisions finalized in the SEC's Crowdfunding rulemaking, FinCEN believes that it is further appropriate, in response to changes in the registration requirement in the JOBS Act, to amend the BSA definitions of a broker or dealer in securities and broker-dealer to explicitly include funding portals, registered or required to be registered as such, with the SEC. Explicitly requiring funding portals to comply with the BSA's requirements, consistent with registered brokers or dealers in securities, helps ensure consistent regulation of brokers or dealers in securities with fewer opportunities for regulatory gaps, which could be exploited by financial criminals. Because the BSA and its implementing rules are risk-based, we expect that funding portals would design programs commensurate with their limited business model and not the more comprehensive programs established by full service broker-dealers.

B. Overview of the Current Regulatory Provisions Regarding Brokers or Dealers in Securities and Broker-Dealers

On October 26, 2001, the President signed into law the USA PATRIOT Act of 2001. Title III of the USA PATRIOT Act makes a number of amendments to the anti-money laundering provisions of the BSA to promote the prevention, detection, and prosecution of international money laundering and the financing of terrorism. The statutory mandate that all financial institutions, which include brokers or dealers in securities, establish an AML program and comply with the BSA regulations is a key element in the nation's effort to detect and prevent money laundering and the financing of terrorism. If implemented, this proposal would explicitly incorporate a funding portal's activities within the existing definition of brokers or dealers in securities, and require funding portals to comply with the full range of requirements outlined in 31 CFR 1023 applicable to broker-dealers, including: (1) AML program; (2) Suspicious Activity Report; (3) Customer Identification Program; (4) Currency Transaction Report; (5) Recordkeeping and Travel rules; (6) Information Sharing (section 314); (7) Due Diligence for Correspondent Accounts for Foreign Financial Institutions and Private Banking Accounts; (8) Prohibition on Correspondent Accounts for Foreign Shell Banks; and (9) Special Measures (section 311).[30] The following are brief descriptions of the regulations that would apply to funding portals if this rulemaking is finalized as proposed.

1. Anti-Money Laundering Program

Section 352(a) of the USA PATRIOT Act amended section 5318(h) of the BSA. Section 5318(h)(1) requires every financial institution defined in 31 U.S.C. 5312(a)(2), which are also covered in 31 CFR, to establish an AML program that includes, at minimum, (1) the development of internal policies, procedures, and controls; (2) the designation of a compliance officer; (3) an ongoing employee training program; and (4) an independent audit function to test programs.[31] The BSA defines the term "financial institution" to include, in part, "a broker or dealer in securities."[32] Currently, a broker or dealer in securities that implements and maintains an AML program that complies with the rules, regulations, or requirements of its self-regulatory organization ("SRO") is deemed to satisfy the requirement of section 5318 (h)(1) of the BSA.[33]

2. Suspicious Activity Report

FinCEN has promulgated Suspicious Activity Report ("SAR") regulations for a number of financial institutions. These include banks, casinos, money services businesses, brokers or dealers in securities, mutual funds, insurance companies, and futures commission merchants and introducing brokers in commodities.[34] 31 CFR 1023.320 contains the rules setting forth the obligation of broker-dealers in securities to report suspicious transactions. Specifically, brokers or dealers in securities are required to report a transaction that is conducted or attempted by, at, or through a broker-dealer and involves or aggregates to at least $5,000 in funds or other assets, and the broker-dealer knows, suspects, or has reason to suspect that the transaction (or a pattern of transactions of which the transaction is a part) (i) involves funds derived from illegal activity or is intended or conducted to hide or disguise funds or assets derived from illegal activity; (ii) is designed, whether through structuring or other means, to evade the requirements of the BSA; (iii) has no business or apparent lawful purpose, and the broker or dealer in securities knows of no reasonable explanation for the transaction after examining the available facts; or (iv) involves the use of the broker-dealer to facilitate criminal activity.

3. Currency Transaction Report

The Secretary was granted authority in 1970, with the enactment of 31 U.S.C. 5313, to require financial institutions to report currency transactions exceeding $10,000. The information collected on the Currency Transaction Report is required to be provided pursuant to 31 U.S.C. 5313. The implementing regulation for brokers or dealers in securities can be found at 31 CFR 1023.310.

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[29] *See* 78 FR 66428, 66490. *See also, e.g.,* National Association Of Securities Dealers ("NASD") (n/k/a "FINRA"), NASD Provides Guidance To Member Firms Concerning Anti-Money Laundering Compliance Programs Required by Federal Law, Special Notice to Members 02–21 (Apr. 2002), available *https://www.finra.org/Industry/Regulation/Notices/2002/p003703* (stating that "introducing brokers generally are in the best position to 'know the customer,' and thus to identify potential money laundering concerns at the account opening stage, including verification of the identity of the customer and deciding whether to open an account for a customer.").

[30] *See* 31 CFR 1023.210, 1023.220, 1023.310, 1023.320, 1023.410, 1023.520, 1023.610, and 1023.630.

[31] 31 U.S.C. 5318(h)(1)(A–D).

[32] 31 U.S.C. 5312(a)(2)(G).

[33] 31 CFR 1023.210. *See also* Notice of Proposed Rulemaking—Customer Due Diligence Requirements for Financial Institutions 79 FR 45151 (Aug. 4, 2014). Treasury proposed rules to clarify and strengthen customer due diligence requirements, to include a new requirement to identify beneficial owners of legal entity customers. The proposed changes in that notice of proposed rulemaking may have an impact on what is proposed in this notice.

[34] *See* 31 CFR 1020.210, 1020.320, 1021.210, 1021.320, 1022.210, 1022.320, 1023.210, 1023.320, 1024.210, 1024.320, 1025.210, 1025.320, 1026.210, and 1026.320, respectively.

4. Records To Be Made and Retained by Financial Institutions

On January 3, 1995, FinCEN and the Board of Governors of the Federal Reserve System ("the Board") jointly issued a rule that requires banks and nonbank financial institutions to collect and retain information on certain funds transfers and transmittals of funds (the "recordkeeping rule").[35] At the same time, FinCEN issued the "travel rule," which requires banks and nonbank financial institutions to include with a transmittal order certain information on funds transfers and transmittals of funds sent to other banks or nonbank financial institutions.[36]

The recordkeeping and travel rules provide uniform recordkeeping and transmittal requirements for financial institutions, and are intended to help law enforcement and regulatory authorities detect, investigate, and prosecute money laundering and other financial crimes by preserving an information trail about persons sending and receiving funds through the funds transfer system.

In general, the recordkeeping rule requires financial institutions to retain certain information on transmittals of funds of $3,000 or more, which must be retrievable and available upon request to FinCEN, to law enforcement, and to regulators to whom FinCEN has delegated the BSA compliance examination authority. Under the travel rule, a financial institution acting as the transmittor's financial institution must obtain and include in the transmittal order certain information on transmittals of funds of $3,000 or more.

5. Customer Identification Program

31 CFR 1023.220 sets forth the customer identification program ("CIP") requirements for brokers or dealers in securities, which would include funding portals with the proposed amendments. Under the rule published jointly with the SEC,[37] brokers or dealers in securities must establish a written CIP that, at a minimum, includes procedures for: (1) Obtaining customer identifying information from each customer prior to account opening; (2) verifying the identity of each customer to the extent reasonable and practicable, within a reasonable time before or after account opening; (3) making and maintaining a record of obtained information relating to identity verification; (4) determining, within a reasonable time after account opening or earlier, whether a customer appears on any list of known or suspected terrorist organizations designated by Treasury; and (5) providing each customer with adequate notice, prior to opening an account, that information is being requested to verify the customer's identity.[38] Under certain defined circumstances, brokers or dealers in securities may rely on the performance of another financial institution that also is subject to an AML compliance program rule to fulfill some or all of the requirements of the broker-dealer's CIP.[39]

6. Special Information Procedures To Deter Money Laundering and Terrorist Activity

31 CFR 1023.500 states generally that brokers or dealers in securities are covered by the special information procedures to detect money laundering and terrorist activity requirements.[40] Sections 1010.520 and 1010.540 implement sections 314(a) and 314(b) of the USA PATRIOT Act, respectively.

Under the section 314(a) requirements, brokers or dealers in securities must respond to requests for information made by FinCEN on behalf of Federal, state, and local law enforcement agencies, or a similar request from FinCEN on its own behalf, on behalf of certain components of Treasury, or on behalf of certain foreign law enforcement agencies.[41] Upon receiving such a request, a broker or dealer in securities is required to search its records to determine whether it has accounts for, or has engaged in transactions with, any specified individual, entity, or organization.[42] Under the regulation implementing section 314(b), brokers or dealers in securities are authorized to share information with one another, under a safe harbor that offers protections from liability, in order to better identify and report potential money laundering or terrorist activities.[43]

7. Due Diligence Anti-Money Laundering Programs for Private Banking and Certain Foreign Accounts

31 CFR 1023.600 generally states that brokers or dealers in securities are subject to the special standards of diligence, prohibitions, and special measures requirements.[44] Sections 1010.610, 1010.620, and 1010.630 implement section 312 of the USA PATRIOT Act and generally apply to any financial institution listed in 31 U.S.C. 5312(a)(2). Sections 1023.610 and 1023.620 require U.S. financial institutions, including brokers or dealers in securities, to establish risk-based due diligence policies, procedures, and controls reasonably designed to detect and report money laundering through correspondent accounts and private banking accounts that U.S. financial institutions establish or maintain for non-U.S. persons.

8. Prohibition on Correspondent Accounts for Foreign Shell Banks; Records Concerning Owners of Foreign Banks and Agents for Service of Legal Process

Section 313 of the USA PATRIOT Act amended the BSA by adding subsection (j) to 31 U.S.C. 5318. Sections 1010.630 and 1023.630 implement this provision and set forth the requirements for brokers and dealers in securities. The regulations prohibit covered financial institutions from providing correspondent accounts in the United States to foreign shell banks (*i.e.,* banks without a physical presence in any country) and to take reasonable steps to ensure that correspondent accounts provided to foreign banks are not being used to provide banking services to foreign shell banks indirectly.[45] The statutory and regulatory definitions of covered financial institutions include a broker or dealer in securities.[46] Brokers and dealers in securities must comply with this regulation with respect to any account they provide in the United States to a foreign bank that permits the foreign bank to engage in securities transactions, funds transfers, or other financial transactions through that account.

Section 319(b) of the USA PATRIOT Act amended the BSA by adding subsection (k) to 31 U.S.C. 5318, which requires any covered financial institution that provides a correspondent account to a foreign bank to maintain records of the foreign bank's owners and any agent in the United States designated to accept service of legal process for records regarding the correspondent account. While the rule does not prescribe the manner in which a covered financial institution must obtain the required information, it does provide a safe harbor if a covered financial institution obtains from the foreign bank the model certification provided on FinCEN's public Web site.[47] The rule requires covered financial institutions to verify the information previously provided by each foreign bank for which it maintains a correspondent account at least once every two years.

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[35] 31 CFR 1020.410(a) (recordkeeping requirements for banks); 31 CFR 1010.410(e) (recordkeeping requirements for nonbank financial institutions). The Board revised its Regulation S (12 CFR part 219) to incorporate by reference the recordkeeping rule codified in Title 31 of the CFR, as well as to impose a five-year record-retention requirement with respect to the recordkeeping requirements.

[36] 31 CFR 1010.410(f).

[37] 68 FR 25113 (May 9, 2003).

[38] 31 CFR 1023.220(a)(6).

[39] *Id.*

[40] These requirements are set forth and cross referenced in sections 1023.520 (cross referencing to 31 CFR 1010.520) and 1023.540 of 31 CFR (cross-referencing to 31 CFR 1010.540).

[41] 31 CFR 1010.520(b).

[42] 31 CFR 1010.520(b)(3).

[43] 31 CFR 1023.540.

[44] These requirements are set forth and cross referenced in sections 1023.610 (cross referencing to 31 CFR 1010.610), 1023.620 (cross-referencing to 31 CFR 1010.620), and 1023.630 of 31 CFR (cross-referencing to 31 CFR 1010.630).

[45] *See* 31 CFR 1010.630.

[46] *See* 31 U.S.C. 5318(j)(1) and 5312(a)(2).

9. Special Measures Under Section 311 of the USA PATRIOT Act

Section 311 of the USA PATRIOT Act ("section 311") added section 5318A to the BSA, granting FinCEN the authority to require domestic financial institutions and financial agencies to take certain "special measures" upon finding that reasonable grounds exist for concluding that a foreign jurisdiction, institution, class of transaction, or type of account is of "primary money laundering concern." To address the specific money laundering risks, section 311 provides a range of special measures that can be imposed individually, jointly, in any combination, and in any sequence.[48]

Under 31 CFR 1010.810(a), "[o]verall authority for enforcement and compliance, including coordination and direction of procedures and activities of all other agencies exercising delegated authority under this chapter, is delegated [by the Secretary] to the Director, FinCEN." In turn, Federal functional regulators have been delegated authority to examine certain financial institutions they oversee for compliance with FinCEN's regulations. FinCEN has delegated to the SEC the authority to examine brokers or dealers in securities, which would include funding portals, for compliance with FinCEN regulations.[49]

III. Section-by-Section Analysis

This NPRM proposes to revise the regulations implementing the BSA by amending the definition of "broker or dealer in securities" and its synonymous term "broker-dealer" to specifically include funding portals that are involved in the offering or selling of crowdfunding securities pursuant to section 4(a)(6) of the Securities Act of 1933 (15 U.S.C. 77d(a)(6)). These terms are defined in three different places, and phrased slightly differently for each, but are substantively the same:

- In 31 CFR 1010.100(h), a "broker or dealer in securities" is defined as "[a] broker or dealer in securities, registered or required to be registered with the Securities and Exchange Commission under the Securities Exchange Act of 1934, except persons who register pursuant to section 15(b)(11) of the Securities Exchange Act of 1934."
- 31 CFR 1010.605(e)(1)(viii) and (e)(2)(viii) refer to "[a] broker or dealer in securities registered, or required to be registered, with the Securities and Exchange Commission under the Securities Exchange Act of 1934 (15 U.S.C. 78a *et seq.*), except persons who register pursuant to section 15(b)(11) of the Securities Exchange Act of 1934."
- In 31 CFR 1023.100(b), a "broker-dealer" is defined to mean "a person registered or required to be registered as a broker or dealer with the Commission under the Securities Exchange Act of 1934 (15 U.S.C. 77a *et seq.*), except persons who register pursuant to 15 U.S.C. 78o(b)(11)."[50]

FinCEN proposes to amend these definitions by adding to each the phrase "a person registered, or required to be registered, as a funding portal with the Securities and Exchange Commission under section 4(a)(6) of the Securities Act of 1933 (15 U.S.C. 77d(a)(6))." FinCEN further proposes to make technical amendments to each definition to create one standard definition of the terms "broker or dealer in securities" and "broker-dealer" to be used throughout the regulations.

IV. Request for Comment

FinCEN invites comment on any and all aspects of the NPRM, and specifically seeks comments on the following questions:

- Is the application of all BSA regulations currently covering brokers or dealers in securities to funding portals appropriate?
- Are there exceptions to the regulations that should be granted to funding portals? If so, why would any such exceptions be appropriate?

V. Executive Orders 12866 and 13563

Executive Orders 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. It has been determined that this proposed rule is a significant regulatory action, although not economically significant, for purposes of Executive Orders 12866 and 13563.

VI. Unfunded Mandates Act of 1995 Statement

Section 202 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act"), Public Law 104–4 (March 22, 1995), requires that an agency prepare a budgetary impact statement before promulgating a rule that may result in expenditure by the state, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year. If a budgetary impact statement is required, section 202 of the Unfunded Mandates Act also requires an agency to identify and consider a reasonable number of regulatory alternatives before promulgating a rule. Since there is no change to the requirements imposed under existing regulations, FinCEN has determined that it is not required to prepare a written statement under section 202.

VII. Regulatory Flexibility Act

The Regulatory Flexibility Act ("RFA") (5 U.S.C. 601 *et seq.*) requires that a regulation that has a significant economic impact on a substantial number of small entities, small businesses, or small organizations must include an initial regulatory flexibility analysis describing the regulation's impact on small entities. Such an analysis need not be undertaken if the agency has certified that the regulation will not have a significant economic impact on a substantial number of small entities (5 U.S.C. 605(b)).

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[47] Certification Regarding Correspondent Accounts for Foreign Banks, *available at: http://www.fincen.gov/forms/files/Certification%20Regarding%20Correspondent%20Accounts%20for%20Foreign%20Banks.pdf;* Certification Regarding Correspondent Accounts for Foreign Banks, *available at: http://www.fincen.gov/forms/files/Recertification%20Regarding%20Correspondent%20Accounts%20for%20Foreign%20Banks.pdf.*

[48] Available special measures include requiring: (1) Recordkeeping and reporting of certain financial transactions; (2) collection of information relating to beneficial ownership; (3) collection of information relating to certain payable-through accounts; (4) collection of information relating to certain correspondent accounts; and (5) prohibition or conditions on the opening or maintaining of correspondent or payable through accounts. 31 U.S.C. 5318A(b)(1)–(5). For a complete discussion of the range of possible countermeasures, see 68 FR 18917 (April 17, 2003) (proposing special measures against Nauru).

[49] 31 CFR 1010.810(b)(6).

[50] FinCEN is also amending this section of the rule to reflect the correct citation of 15 U.S.C. 78a *et seq.* currently published as 15 U.S.C. 77a *et seq.*

Section 601(3) of the RFA states that the term "small business" has the same meaning as the term "small business concern" under section 3 of the Small Business Act, unless an agency, after consultation with the Office of Advocacy of the Small Business Administration and after opportunity for public comment, establishes one or more definitions of such term which are appropriate for the activities of the agency and publishes such definition(s) in the **Federal Register**. The Small Business Administration's ("SBA") defines a broker dealer industry to be a small entity as having "annual receipts" of $38.5 million.[51] However, FinCEN is concerned that using the SBA size standard rather than the SEC size standard may result in confusion. Accordingly, FinCEN consulted with the SBA's Office of Advocacy. After consultation, FinCEN is proposing to define the term small entity in accordance with definitions obtained from SEC rules implementing the Securities Exchange Act,[52] in lieu of using the Small Business Administration's definition.[53] The SEC defines an entity as a small broker or dealer, for purposes of the RFA, if it: (1) Had total capital (net worth plus subordinated liabilities) of less than $500,000 on the date in the prior fiscal year as of which its audited financial statements were prepared pursuant to Rule 17a–5(d) or, if not required to file such statements, a broker or dealer that had total capital (net worth plus subordinated debt) of less than $500,000 on the last business day of the preceding fiscal year (or in the time that it has been in business if shorter); and (2) is not affiliated with any person (other than a natural person) that is not a small business or small organization as defined in this release. The proposed rules would define broker or dealer in securities as: (1) A person registered, or required to be registered, as a broker or dealer with the Securities and Exchange Commission under the Securities Exchange Act of 1934 (15 U.S.C. 78a *et seq.*), except persons who register pursuant to section 15(b)(11) of the Securities Exchange Act of 1934 (15 U.S.C. 78o(b)(11)); or (2) a person, registered, or required to be registered, as a funding portal with the Securities and Exchange Commission under section 4(a)(6) of the Securities Act of 1933 (15 U.S.C. 77d(a)(6). Based on FOCUS Report data, the SEC estimated that there are 871 broker-dealers that are classified as "small" entities for purposes of the RFA.[54] The SEC applied comparable criteria to funding portals that would register under the SEC's Crowdfunding rule.

Relying on the SEC's definition has the benefit of ensuring consistency in the categorization of small entities for SEC examiners, as well as providing the broker or dealer industry with a uniform standard. In addition, FinCEN's proposed use of the SEC's definition of small entity will have no material impact upon the application of these proposed rules to the broker or dealer industry. FinCEN requests comment on the appropriateness of using the SEC's definition of small entity.

The proposed changes are intended to amend the regulatory definition of broker or dealer in securities to include funding portals in light of the JOBS Act and the Final SEC Crowdfunding Rules. While these amendments do not alter a broker or dealer in securities existing obligations, they will expand the BSA regulations to create obligations for funding portals. Accordingly, FinCEN has prepared an initial regulatory flexibility analysis pursuant to the Regulatory Flexibility Act. A final regulatory flexibility analysis will be conducted after consideration of comments received during the public comment period.

1. Statement of the Need for, and Objectives of, the Proposed Regulation

The JOBS Act creates a comprehensive regulatory structure for startups and small businesses to raise capital through securities offerings using the Internet through crowdfunding. It also establishes the regulation of registered funding portals and brokers that are required to act as intermediaries in the offer and sale of crowdfunded securities. The JOBS Act amends the Federal securities laws to include certain funding portals, defined as any person acting as an intermediary in a transaction involving the offer or sale of securities for the account of others solely pursuant to section 4(a)(6) of the Securities Act, but that is exempted from the requirement to register as a broker-dealer with the SEC, and is instead required to be registered as a funding portal with the SEC. This proposed regulation is necessary to expand the scope of the regulatory definition of broker or dealer in securities to incorporate funding portals, to ensure consistent applicability of the BSA regulations to all brokers in securities.

2. Small Entities Affected by the Proposed Regulation

While the proposed BSA requirements would impose burdens on funding portals, the proposed rules would not impose any burden on funding portals in addition to those already imposed on broker-dealers. Consequently, we do not discuss those burdens here, and we would not be requesting any separate approval from OMB to impose the burdens associated with the information collection requirements to comply with the requirements of 31 CFR 1023, including the BSA/AML program, CTR, SAR, CIP, Recordkeeping and travel rules, Due Diligence Programs for Correspondent Accounts for Foreign Financial Institutions and Private Bank accounts, Prohibition on Correspondent Account for Shell Banks, section 311, and section 314 requirements.

The requirements of this proposed regulation, which are consistent with the existing requirements for brokers or dealers in securities, would include funding portals regardless of size. Based on SEC analysis of the estimated 50 funding portals in the first year expected to register with the SEC, as a result of the JOBS Act and implementing regulations, 30 would be classified as "small" entities for purposes of the Regulatory Flexibility Act.[55]

3. Compliance Requirements

Upon finalization of this proposal, registered funding portals would be required to comply with all of the requirements of the BSA, including the reporting, recordkeeping, and record retention requirements that apply to entities currently defined as brokers or dealers in securities. We recognize that the proposed rules would impose costs on funding portals to implement AML procedures, but we believe that the proposed amendments and requirements provide important benefits. As noted in the SEC NPRM, low-priced and privately-placed securities pose a money laundering risk because they are susceptible to market manipulation and fraud.[56] Requiring funding portals to comply with BSA regulations, in particular the requirement to file SARs, helps identify potentially fraudulent activity for law enforcement and regulators. These AML requirements would therefore help to protect market participants from illegal activity that could potentially infiltrate new online investment opportunities. Requiring the implementation of AML procedures in turn provides potential investors with some degree of confidence that adequate protections against illegal activity exist for this new fundraising approach and could encourage more investors to participate, thus facilitating capital formation.

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[51] *Id.*

[52] 17 CFR 240.0–10c.

[53] 13 CFR 121.201.

[54] FOCUS Reports, or "Financial and Operational Combined Uniform Single" Reports, are monthly, quarterly, and annual reports that broker-dealer generally are required to file with the SEC and or self-regulatory organizations pursuant to Exchange Act Rule 17a–5 (17 CFR 240.17a–5).

[55] *See* 80 FR 71387, 71533 (Nov. 16, 2015).

[56] *See* 78 FR 66428, 66490–66491 (Nov. 5, 2013).

The proposed regulations would require funding portals to develop programs reasonably designed to comply with the BSA and to collect and keep certain information, as well as report suspicious activity, among other reports. While the proposed regulations would not change the scope of compliance with the BSA requirements for brokers or dealers in securities that are not funding portals, the reporting, recordkeeping, and other compliance requirements of the proposed regulation would impact small entities that decide to register as funding portals. While the majority of these requirements would be performed by the funding portal's internal compliance personnel, some funding portals may choose to hire outside counsel and third-party service providers to assist in meeting the compliance requirements.

4. Duplicative, Overlapping, or Conflicting Federal Rules

FinCEN believes that there are no Federal rules that duplicate, overlap, or conflict with the proposed regulations or the proposed amendments.

5. Significant Alternatives to the Proposed Regulations

FinCEN considered whether it would be appropriate to establish different compliance or reporting obligations for small funding portals in the proposal, or whether small funding portals should be exempt from any parts of the proposed rules or even from the rules in their entirety. While the proposed rules are based on existing compliance requirements applicable to registered brokers or dealers in securities, FinCEN believes that it would not be necessary, nor would it be advisable, to establish different requirements for small funding portals that engage in crowdfunding. Eliminating or issuing different requirements for smaller funding portals would not be the most effective means of addressing the money laundering risk associated with securities crowdfunding as it would create a loophole and a path of least resistance that money launderers could exploit. The number of small funding portals that would be affected by the proposed rules would be limited. According to the SEC, an industry survey of crowdfunding platforms reported that 191 platforms were estimated to be operating in the United States as of 2012.[57] Based on 135 participants in the survey both in the United States and international jurisdictions, 15% of funding portal platforms were engaged in securities-based crowdfunding.[58] Although the number of intermediaries that may ultimately register as funding portal is uncertain, it is likely that three to four of the crowdfunding platforms that have the majority of market share in reward-based and donation-based crowdfunding would most likely obtain the majority of market share in the securities-based crowdfunding market based on section 4(a)(6).[59] The BSA regulations are risk-based and are designed so that entities that are subject to the regulations can implement a program that is commensurate with the risks posed by their particular business. FinCEN expects that a small funding portal would implement a risk-based compliance program that takes into account the limited business activities in which the business participates. For example, a funding portal could implement a risk-based compliance program which reflects the fact that the business does not accept cash or securities from its customers. Therefore, we believe that the proposed rules are appropriate, and properly cover all brokers or dealers in securities, including funding portals. Furthermore, FinCEN believes that having different requirements for funding portals could undermine the objectives of the proposed requirements.

FinCEN welcomes comment on any significant alternatives that would minimize the impact of the proposal on small funding portal entities.

VIII. Paperwork Reduction Act

The collection of information requirements have been reviewed and approved by the Office of Management and Budget ("OMB") under section 3507 of the Paperwork Reduction Act of 1995 ("PRA") (44 U.S.C. 3507(d). (OMB Control Number 1506–0004 for the CTR requirement, the OMB Control Number for the CTR report itself is 1506–0064, OMB Control Number 1506–0019 for the SAR regulatory requirement, the OMB Control Number for the BSA SAR report itself is 1506–0065, OMB Control Number 1506–0034 for the CIP requirement, OMB Control Number 1506–0043 for the Prohibitions on Correspondent Accounts for Foreign Shell Banks requirement, OMB Control Number 1506–0049 for the section 314 requirement, and OMB Control Number 1506–0053 for the Recordkeeping and travel rules requirements). Under the PRA, an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. Certain provisions of the proposed rules contain "collection of information" requirements within the meaning of the PRA. This proposal intends to expand the scope of financial institutions subject to the BSA regulations FinCEN issued for brokers or dealers in securities to include funding portals. The collections of information included under OMB Control Number 1506–0004 for the CTR requirement, OMB Control Number 1506–0019 for the SAR requirement, OMB Control Number 1506–0034 for the CIP requirement, OMB Control Number 1506–0043 for the Prohibitions on Correspondent Accounts for Shell Banks requirement, OMB Control Number 1506–0049 for the section 314 requirement, and OMB control number 1506–0053 for the Recordkeeping and travel rules requirements, respectively would be amended to reflect related burdens under the proposed rules.

1. Description of Affected Financial Institutions

Funding portals registered or required to be registered with the SEC.

2. Estimated Number of Affected Financial Institutions

According to the SEC, as of 2014, there are approximately 200 U.S.-based crowdfunding portals in existence. Approximately 15% of these crowdfunding portals would participate in securities-based crowdfunding. The SEC estimates that the number of crowdfunding portals would grow at 60% per year over the next three years and that approximately 50 entities would register as funding portals annually.[60]

For purposes of this analysis it should be noted that the actual number of funding portals that would participate in securities-based crowdfunding transactions is uncertain, as the rules governing securities-based crowdfunding transactions through funding portals have only recently been passed. Based on registration information currently available, the SEC estimates that approximately 10 intermediaries that are currently registered with the SEC may choose to register as brokers to act as intermediaries for transactions made in reliance on section 4(a)(6). In addition, approximately 50 intermediaries per year that are registered as brokers with the SEC would choose to add to their service offerings by also becoming crowdfunding intermediaries or funding portals.

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[57] *See* 78 FR 66428, 66516 (Nov. 5, 2013).

[58] The survey further indicated that 11% were engaged in lending-based crowdfunding, 27% in donation-based crowdfunding, and 47% in reward-based crowdfunding.

[59] *See* 78 FR 66428, 66516 (Nov. 5, 2013).

[60] *See* 80 FR 71387, 71523 (Nov. 16, 2015).

3. Estimated Average Annual Burden Hours Per Affected Financial Institutions, Estimated Total Annual Burden

As this is a new requirement, the estimated average burden associated with the recordkeeping requirement in this proposed rule is three hours for development of a written program. A one hour per year burden is recognized for annual maintenance and update. FinCEN believes funding portals would establish policies and procedures to achieve compliance with the BSA requirements at the same time as it is establishing policies and procedures to comply with the JOBS Act. This would reduce the overall burden on funding portals as all issues concerning the establishment of policies and procedures could be addressed simultaneously. Nevertheless, the proposed rules would not impose any additional burden on funding portals to those currently imposed on brokers or dealers. Therefore, the burden on funding portals would be the same as the existing burden for broker-dealers, and would be included within those estimates FinCEN provided to OMB for brokers or dealers.

List of Subjects in 31 CFR Parts 1010 and 1023

Authority delegations (Government agencies), Banks and banking, Currency, Investigations, Law enforcement, Reporting and recordkeeping requirements.

Authority and Issuance

For the reasons set forth in the preamble, parts 1010 and 1023 of Chapter X of title 31 of the Code of Federal Regulations are proposed to be amended as follows:

PART 1010—GENERAL PROVISIONS

■ 1. The authority citation for part 1010 continues to read as follows:

Authority: 12 U.S.C. 1829b and 1951–1959; 31 U.S.C. 5311–5314, 5316–5332; title III, section 314, Pub. L. 107–56, 115 Stat. 307.

■ 2. Amend § 1010.100 by revising paragraph (h) to read as follows:

§ 1010.100 General definitions.

* * * * *

(h) *Broker or dealer in securities.* A broker or dealer in securities means:

(1) A person registered, or required to be registered, as a broker or dealer with the Securities and Exchange Commission under the Securities Exchange Act of 1934 (15 U.S.C. 78a *et seq.*), except persons who register pursuant to section 15(b)(11) of the Securities Exchange Act of 1934 (15 U.S.C. 78o(b)(11)); or

(2) A person registered, or required to be registered, as a funding portal with the Securities and Exchange Commission under section 4(a)(6) of the Securities Act of 1933 (15 U.S.C. 77d(a)(6));

* * * * *

■ 3. Amend § 1010.605 by revising paragraphs (e)(1)(viii) and (e)(2)(viii) to read as follows:

§ 1010.605 Definitions.

* * * * *

(e) * * *

(1) * * *

(viii) A broker or dealer in securities means:

(A) A person registered, or required to be registered, as a broker or dealer with the Securities and Exchange Commission under the Securities Exchange Act of 1934 (15 U.S.C. 78a *et seq.*), except persons who register pursuant to section 15(b)(11) of the Securities Exchange Act of 1934 (15 U.S.C. 78o(b)(11)); or

(B) A person registered, or required to be registered, as a funding portal with the Securities and Exchange Commission under section 4(a)(6) of the Securities Act of 1933 (15 U.S.C. 77d(a)(6));

* * * * *

(2) * * *

(viii) A broker or dealer in securities means:

(A) A person registered, or required to be registered, as a broker or dealer with the Securities and Exchange Commission under the Securities Exchange Act of 1934 (15 U.S.C. 78a *et seq.*), except persons who register pursuant to section 15(b)(11) of the Securities Exchange Act of 1934 (15 U.S.C. 78o(b)(11)); or

(B) A person registered, or required to be registered, as a funding portal with the Securities and Exchange Commission under section 4(a)(6) of the Securities Act of 1933 (15 U.S.C. 77d(a)(6)).

* * * * *

PART 1023—RULES FOR BROKERS OR DEALERS IN SECURITIES

■ 4. The authority citation for part 1023 continues to read as follows:

Authority: 12 U.S.C. 1829b and 1951–1959; 31 U.S.C. 5311–5314, 5316–5332; title III, section 314, Pub. L. 107–56, 115 Stat. 307.

■ 5. Amend § 1023.100 by revising paragraph (b) to read as follows:

§ 1023.100 Definitions.

* * * * *

(b) *Broker or dealer in securities* or *broker-dealer* means:

(1) A person registered, or required to be registered, as a broker or dealer with the Securities and Exchange Commission under the Securities Exchange Act of 1934 (15 U.S.C. 78a *et seq.*), except persons who register pursuant to section 15(b)(11) of the Securities Exchange Act of 1934 (15 U.S.C. 78o(b)(11)); or

(2) A person registered, or required to be registered, as a funding portal with the Securities and Exchange Commission under section 4(a)(6) of the Securities Act of 1933 (15 U.S.C. 77d(a)(6)).

Jennifer Shasky Calvery,

Director, Financial Crimes Enforcement Network.

[FR Doc. 2016–07345 Filed 4–1–16; 8:45 am]

BILLING CODE 4810–02–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[Docket No. USCG–2014–1057]

RIN 1625–AA09

Drawbridge Operation Regulation; Norwalk River, Norwalk, CT

AGENCY: Coast Guard, DHS.

ACTION: Supplemental Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to modify the operating schedule that governs the Metro-North WALK Bridge across the Norwalk River, mile 0.1, at Norwalk, Connecticut. The bridge owner submitted a request to require a greater advance notice for bridge openings and to increase time periods the bridge remains in the closed position during the weekday morning and evening rush hours. It is expected that this change to the regulations will create efficiency in drawbridge operations while continuing to meet the reasonable needs of navigation.

DATES: Comments and related material must reach the Coast Guard on or before May 4, 2016.

ADDRESSES: You may submit comments identified by docket number USCG–2014–1057 using Federal eRulemaking Portal at *http://www.regulations.gov.*

See the "Public Participation and Request for Comments" portion of the **SUPPLEMENTARY INFORMATION** section below for instructions on submitting comments.

FOR FURTHER INFORMATION CONTACT: If you have questions on this supplemental proposed rule, call or email Mr. Chris Bisignano, Project officer, First Coast Guard District, telephone 212–514–4331, email *Christopher.j.bisignano@uscg.mil.*

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

CFR	Code of Federal Regulations
DHS	Department of Homeland Security
E.O.	Executive order
FR	Federal Register
NPRM	Notice of proposed rulemaking
SNPRM	Supplemental notice of proposed rulemaking
Pub. L.	Public Law
§	Section
U.S.C.	United States Code

II. Background, Purpose, and Legal Basis

On August 31, 2015, we published a notice of proposed rulemaking (NPRM) entitled, Drawbridge Operation Regulation; Norwalk River, Norwalk, CT, in the **Federal Register** (80 FR 52423), soliciting comments on the proposed rule through October 30, 2015. In addition, Commander (dpb), First Coast Guard District published Public Notice 1–149 dated September 21, 2015. We received four submissions on the proposed rule, which will be addressed in Section III, below.

The Metro-North WALK Bridge, mile 0.1, across the Norwalk River at Norwalk, Connecticut, has a vertical clearance in the closed position of 16 feet at mean high water and 23 feet at mean low water. The drawbridge operation regulations are listed at 33 CFR 117.217(b). The waterway users are seasonal recreational vessels and commercial vessels of various sizes.

The owner of the bridge, Connecticut Department of Transportation (CDOT), requested a change to the Drawbridge Operation Regulations because the volume of train traffic across the bridge during the peak commuting hours makes bridge openings impractical under the current schedule. As a result, bridge openings that occur during peak commuter train hours cause significant delays to commuter rail traffic.

The NPRM published in August 2015 would have permanently changed the operating hours during the Monday–Friday, excluding holidays, timeframes to operate as follows:

(1) The draw shall open on signal between 4:30 a.m. and 9 p.m. after at least a two hour advance notice is given; except that, from 4:30 a.m. through 9:30 a.m. and from 4 p.m. through 9 p.m., Monday through Friday excluding holidays, the draw need not open for the passage of vessel traffic unless an emergency exists.

(2) From 9 p.m. through 4:30 a.m. the draw shall open on signal after at least a four hour advance notice is given.

In response to the comments received and after further review of bridge logs and train schedules, the Coast Guard now proposes to modify the NPRM by adjusting when the draw will be available to open Monday through Friday, excluding holidays as follows:

(1) The draw shall open on signal between 4:30 a.m. and 9 p.m. after at least a two hour advance notice is given; except that, from 5:45 a.m. through 9:45 a.m. and from 4 p.m. through 8 p.m., Monday through Friday excluding holidays, the draw need not open for the passage of vessel traffic unless an emergency exists.

(2) From 9 p.m. through 4:30 a.m. the draw shall open on signal after at least a four hour advance notice is given.

III. Discussion of Comments and Change

We received four submissions commenting on the NPRM. Three submissions opposed and one submission supported the proposed changes. Some submissions commented on multiple aspects of the proposed regulation. The Coast Guard considered all comments and the responses from CDOT in creation of this supplemental alternative proposal.

One comment suggested a meeting to deliberate the changes proposed in this rulemaking. The Coast Guard met with all parties that expressed interest in this rulemaking on May 11, 2015. The Coast Guard does not see a need to hold additional public meetings at this time.

One comment requested that any modification to the existing rule should not be extended past the initiation of construction of a new replacement bridge. The Coast Guard disagrees. A replacement bridge is only in the planning stage at CDOT. Design and construction of a replacement project for a bridge of this scale typically takes several years. As the timeline of a potential bridge replacement is uncertain, the Coast Guard cannot consider it within this rulemaking.

One comment suggested that any change in the operating regulations for the Metro-North WALK bridge should take into consideration the operating rule of the downstream SR136 (Washington Street) Bridge to facilitate the movement of waterborne commerce. The Coast Guard agrees that the operating schedule of the SR136 Bridge is relevant and considered the operating schedule for SR136 when drafting this supplemental rulemaking.

One comment recommended that the Coast Guard consider revising the 4:30 a.m. to 9:30 a.m. opening schedule, Monday through Friday, as only two trains cross the bridge from 9 a.m. to 9:30 a.m. In response to this comment, the Coast Guard expanded its analysis of train traffic densities; this analysis contributed to the adjustments made in this supplemental rule compared to the proposed rule. These adjustments shorten from five to four hours the a.m. and p.m. periods provided for in the "except that" language in paragraph (b)(1) of the regulation, but also shifts the a.m. period to end later in the day.

Two commenters noted that the added restrictions to opening times of the bridge would negatively impact aggregate deliveries and require alternative deliveries by truck, thereby stressing the road system in the area. Even under the more restrictive test deviation conducted from January 1, 2015, to June 28, 2015, as discussed in the NPRM, Metro-North was able to accommodate all of the requests for bridge openings. Further, review of the bridge logs revealed that in 2014, prior to the aforementioned test deviation and NPRM, as compared to 2015 during the test deviation and the NPRM, the difference in the number of requested bridge openings was negligible. The Coast Guard also reviewed tidal data for this area in consideration of the types of commercial traffic known to use this waterway. The combination of these factors contributed to the adjustments made in this supplemental rule compared to the proposed rule.

The Coast Guard believes the supplemental changes balance the needs of rail and vessel traffic. The proposed changes enhance rail traffic without significantly affecting vessel traffic.

In review of the proposed rule and stakeholder comments, the Coast Guard noted that the term "emergency," as used within the existing and proposed regulation, was not specifically discussed. The term and associated required actions by the bridge owner are as defined within 33 CFR 117.31. This proposed rule makes no changes to regulations under that section. However, the Coast Guard notes that there may be instances in which emergent conditions beyond those explicitly listed therein could merit a special opening of the bridge for draft constrained vessels when tides and the bridge schedule interfere. For example, if the inventory of seasonally critical home heating oil or road salt at a facility upstream of the bridge that serves as the primary supply within the local area is or will soon be exhausted, and a commercial vessel transit to replenish inventory must occur during an allowed-closed period of the bridge, this condition may also reasonably be expected to require a special opening of the bridge to support public safety. In such cases, the Coast Guard expects that the bridge owner, and involved local municipality or commercial entity can make special arrangements as needed.

IV. Discussion of Proposed Rule

Based on further review of bridge logs and scheduled train crossings, the Coast Guard now proposes to modify the NPRM, specifically changing the "except that" language in paragraph (b)(1) of the regulation as indicated above in Section II. This slight modification would better serve the freedom of navigation without significantly impacted rail traffic.

V. Regulatory Analyses

We developed this proposed rule after considering numerous statutes and Executive Orders related to rulemaking. Below we summarize our analyses based on these statutes and Executive Orders and discuss First Amendment rights of protestors.

1. Regulatory Planning and Review

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits. Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This proposed rule has not been designated a "significant regulatory action," under Executive Order 12866. Accordingly, the proposed rule has not been reviewed by the Office of Management and Budget.

This regulatory action determination is based on the fact that vessels can still transit the bridge given advanced notice. The vertical clearance under the bridge in the closed position is relatively high enough to accommodate most vessel traffic during the time periods the draw is closed during the morning and evening commuter rush hours.

2. Impact on Small Entities

The Regulatory Flexibility Act of 1980 (RFA), 5 U.S.C. 601–612, as amended, requires federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard certifies under 5 U.S.C. 605(b) that this proposed rule would not have a significant economic impact on a substantial number of small entities. While some owners or operators of vessels intending to transit the bridge may be small entities, for the reasons stated in section V.A above, this proposed rule would not have a significant economic impact on any vessel owner or operator.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule would have a significant economic impact on it, please submit a comment (see **ADDRESSES**) explaining why you think it qualifies and how and to what degree this rule would economically affect it.

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this proposed rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT**, above. The Coast Guard will not retaliate against small entities that question or complain about this proposed rule or any policy or action of the Coast Guard.

3. Collection of Information

This proposed rule would call for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520.).

4. Federalism and Indian Tribal Government

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this proposed rule under that Order and have determined that it is consistent with the fundamental federalism principles and preemption requirements described in Executive Order 13132.

Also, this proposed rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it would not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes. If you believe this proposed rule has implications for federalism or Indian tribes, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section above.

5. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 (adjusted for inflation) or more in any one year. Though this proposed rule will not result in such an expenditure, we do discuss the effects of this proposed rule elsewhere in this preamble.

6. Environment

We have analyzed this proposed rule under Department of Homeland Security Management Directive 023–01 and Commandant Instruction M16475.1D, which guides the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have made a preliminary determination that this action is one of a category of actions which do not individually or cumulatively have a significant effect on the human environment. This proposed rule simply promulgates the operating regulations or procedures for drawbridges. Normally such actions are categorically excluded from further review, under figure 2–1, paragraph (32)(e), of the Instruction.

Under figure 2–1, paragraph (32)(e), of the Instruction, an environmental analysis checklist and a categorical exclusion determination are not required for this rule. We seek any comments or information that may lead to the discovery of a significant environmental impact from this proposed rule.

7. Protest Activities

The Coast Guard respects the First Amendment rights of protesters.

Protesters are asked to contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places or vessels.

VI. Public Participation and Request for Comments

We view public participation as essential to effective rulemaking, and will consider all comments and material received during the comment period. Your comment can help shape the outcome of this rulemaking. If you submit a comment, please include the docket number for this rulemaking, indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation.

We encourage you to submit comments through the Federal eRulemaking Portal at *http://www.regulations.gov*. If your material cannot be submitted using *http://www.regulations.gov*, contact the person in the **FOR FURTHER INFORMATION CONTACT** section of this document for alternate instructions.

We accept anonymous comments. All comments received will be posted without change to *http://www.regulations.gov* and will include any personal information you have provided. For more about privacy and the docket, you may review a Privacy Act notice regarding the Federal Docket Management System in the March 24, 2005, issue of the **Federal Register** (70 FR 15086).

Documents mentioned in this notice, and all public comments, are in our online docket at *http://www.regulations.gov* and can be viewed by following that Web site's instructions. Additionally, if you go to the online docket and sign up for email alerts, you will be notified when comments are posted or a final rule is published.

List of Subjects in 33 CFR Part 117

Bridges.

For the reasons discussed in the preamble, the Coast Guard proposes to amend 33 CFR part 117 as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

■ 1. The authority citation for part 117 continues to read as follows:

Authority: 33 U.S.C. 499; 33 CFR 1.05–1; Department of Homeland Security Delegation No. 0170.1.

■ 2. In § 117.217, revise paragraph (b) to read as follows:

§ 117.217 Norwalk River.

* * * * *

(b) The draw of the Metro-North "WALK" Bridge, mile 0.1, at Norwalk, shall operate as follows:

(1) The draw shall open on signal between 4:30 a.m. and 9 p.m. after at least a two hour advance notice is given; except that, from 5:45 a.m. through 9:45 a.m. and from 4 p.m. through 8 p.m., Monday through Friday excluding holidays, the draw need not open for the passage of vessel traffic unless an emergency exists.

(2) From 9 p.m. through 4:30 a.m. the draw shall open on signal after at least a four hour advance notice is given.

(3) A delay in opening the draw not to exceed 10 minutes may occur when a train scheduled to cross the bridge without stopping has entered the drawbridge lock.

(4) Requests for bridge openings may be made by calling the bridge via marine radio VHF FM Channel 13 or the telephone number posted at the bridge.

Dated: March 24, 2016.

L.L. Fagan,

Rear Admiral, U.S. Coast Guard, Commander, First Coast Guard District.

[FR Doc. 2016–07662 Filed 4–1–16; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG–2016–0026]

RIN 1625–AA00

Safety Zone, Block Island Wind Farm; Rhode Island Sound, RI

AGENCY: Coast Guard, DHS.

ACTION: Proposed rule; reopening of comment period.

SUMMARY: The Coast Guard is extending the comment period for the proposed safety zone. In response to public requests, the Coast Guard is extending the comment period until April 17, 2016.

DATES: The comment period for the proposed rule published in the **Federal Register** on February 16, 2016 (81 FR 7718) is reopened. Comments must be received on or before April 17, 2016.

ADDRESSES: You may submit comments identified by docket number USCG–2016–0026 using the *Federal e-Rulemaking Portal* at *http://www.regulations.gov*. See the "Public Participation and Request for Comments" portion of the **SUPPLEMENTARY INFORMATION** section for further instructions on submitting comments.

FOR FURTHER INFORMATION CONTACT: If you have questions about this rule, call or email Mr. Edward G. LeBlanc, Chief of the Waterways Management Division at Coast Guard Sector Southeastern New England, telephone 401–435–2351, email *Edward.G.LeBlanc@uscg.mil*.

SUPPLEMENTARY INFORMATION: On February 16, 2016, the Coast Guard published the proposed rule "Safety Zone, Block Island Wind Farm" in the **Federal Register** (81 FR 7718). The Coast Guard proposes to establish a 500-yard safety zone around each of five locations where the Block Island Wind Farm (BIWF) wind turbine generator (WTG) towers, nacelles, blades and subsea cables will be installed in the navigable waters of the Rhode Island Sound, RI, from April 1 to October 31, 2016. These safety zones are intended to safeguard mariners from the hazards associated with construction of the BIWF. Vessels would be prohibited from entering into, transiting through, mooring, or anchoring within these safety zones while construction vessels and associated equipment are present at any of the BIWF WTG sites, unless authorized by the Captain of the Port (COTP), Southeastern New England or the COTP's designated representative.

The original deadline to submit comments was March 17, 2016. This action extends the deadline for 30 days. Written comments must now be received by April 17, 2016.

Dated: March 22, 2016.

J.T. Kondratowicz,

Captain, U.S. Coast Guard, Captain of the Port Southeastern New England.

[FR Doc. 2016–07659 Filed 4–1–16; 8:45 am]

BILLING CODE 9110–04–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R06–OAR–2015–0189; FRL–9944–42–Region 6]

Promulgation of Implementation Plans; Arkansas; Regional Haze and Interstate Visibility Transport Federal Implementation Plan; Reopening of Comment Period and Notice of Availability

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule; reopening of comment period; availability of supplemental information.

SUMMARY: The Environmental Protection Agency (EPA) is reopening the comment period for a proposed rule to establish a Clean Air Act (CAA) Federal Implementation Plan (FIP) to address regional haze and visibility transport requirements for the State of Arkansas. The reopening of the comment period is strictly limited to EPA's calculations of revised RPGs for Arkansas' Class I areas, which are presented in a supporting document being made available at this time in the docket. EPA is reopening the public comment period until May 4, 2016.

DATES: The comment period for the proposed rule published on April 8, 2015 (80 FR 18944), extended at 80 FR 24872 (July 15, 2015), and reopened at 80 FR 43661 (July 23, 2015), is again reopened. Written comments must be received on or before May 4, 2016.

ADDRESSES: Submit your comments, identified by Docket No. EPA–R06–OAR–2015–0189, at *http://www.regulations.gov* or via email to *donaldson.guy@epa.gov.* Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from Regulations.gov. The EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.* on the web, cloud, or other file sharing system). For additional submission methods, please contact Dayana Medina, 214–665–7241, *medina.dayana@epa.gov.* For the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit *http://www2.epa.gov/dockets/commenting-epa-dockets.*

Docket: The index to the docket for this action is available electronically at *www.regulations.gov* and in hard copy at the EPA Region 6, 1445 Ross Avenue, Suite 700, Dallas, Texas. While all documents in the docket are listed in the index, some information may be publicly available only at the hard copy location (*e.g.*, copyrighted material), and some may not be publicly available at either location (*e.g.*, CBI).

FOR FURTHER INFORMATION CONTACT: Dayana Medina, (214) 665–7241; *medina.dayana@epa.gov.* To inspect the hard copy materials, please schedule an appointment with Dayana Medina or Mr. Bill Deese at 214–665–7253.

SUPPLEMENTARY INFORMATION: On April 8, 2015, we published in the **Federal Register** a proposal to establish a FIP for the State of Arkansas addressing regional haze and visibility transport (80 FR 18944). The proposed FIP includes emission limits for sources in Arkansas. Comments on the proposed rule were required to be received by May 16, 2015. On May 1, 2015, we extended the comment period to July 15, 2015 (80 FR 24872). On July 23, 2015, we reopened the comment period until August 7, 2015 (80 FR 43661), in response to a request we received for an extension of the comment period.

We are announcing the availability in the docket of supplemental information we relied on in our Arkansas FIP proposal, but which was inadvertently omitted from the docket at the time we proposed the FIP. In our proposed rule published on April 8, 2015, we proposed revised RPGs for the 20% worst days for Arkansas' Class I areas, the Caney Creek and Upper Buffalo Wilderness Areas (80 FR at 18998). Our revised RPGs and our methodology for calculating the revised RPGs were discussed in detail in our proposal and in our technical support documentation,[1] which was made available in the docket when the proposed rule was published on April 8, 2015. However, a spreadsheet containing the actual calculations of our revised RPGs was inadvertently omitted from the docket. Therefore, the reopening of the comment period is strictly limited to our calculations of the revised RPGs, as presented in the spreadsheet we are making available at this time in the docket. The reopening of the comment period does not apply to our general methodology for calculating the revised RPGs, to the numerical values of the revised RPGs, or to any other aspects or portions of our proposed rule, for which we have previously provided opportunity for public comment. This action will allow interested persons time to prepare and submit comments on our calculations of the revised RPGs, as presented in the spreadsheet that we are making available in the docket at this time.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Best available control technology, Incorporation by reference, Intergovernmental relations, Interstate transport of pollution, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping, requirements, Sulfur dioxides, Regional haze, Visibility.

Authority: 42 U.S.C. 7401 *et seq.*

Dated: March 23, 2016.

Lisa Price,

Acting Director, Multimedia Planning and Permitting Division, Region 6.

[FR Doc. 2016–07486 Filed 4–1–16; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R04–OAR–2014–0426; FRL–9944–52–Region 4]

Approval and Promulgation of Implementation Plans; Kentucky; Infrastructure Requirements for the 2010 Sulfur Dioxide National Ambient Air Quality Standard

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to approve portions of the State Implementation Plan (SIP) submission, submitted by the Commonwealth of Kentucky, Energy and Environment Cabinet, Department for Environmental Protection, through the Kentucky Division for Air Quality (KDAQ), on April 26, 2013, to demonstrate that the Commonwealth meets the infrastructure requirements of the Clean Air Act (CAA or Act) for the 2010 1-hour sulfur dioxide (SO_2) national ambient air quality standard (NAAQS). The CAA requires that each state adopt and submit a SIP for the implementation, maintenance and enforcement of each NAAQS promulgated by EPA, which is commonly referred to as an "infrastructure" SIP. KDAQ certified that the Kentucky SIP contains provisions that ensure the 2010 1-hour SO_2 NAAQS is implemented, enforced, and maintained in Kentucky. EPA is proposing to determine that Kentucky's infrastructure submission, submitted on April 26, 2013, addresses certain infrastructure elements for the 2010 1-hour SO_2 NAAQS.

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[1] See "Technical Support Document for EPA's Proposed Action on the Arkansas Regional Haze Federal Implementation Plan" at page 147.

DATES: Written comments must be received on or before May 4, 2016.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R04–OAR–2014–0426 at *http://www.regulations.gov.* Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from Regulations.gov. EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.* on the web, cloud, or other file sharing system). For additional submission methods, the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit *http://www2.epa.gov/dockets/commenting-epa-dockets.*

FOR FURTHER INFORMATION CONTACT: Michele Notarianni, Air Regulatory Management Section, Air Planning and Implementation Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street SW., Atlanta, Georgia 30303–8960. Ms. Notarianni can be reached via electronic mail at *notarianni.michele@epa.gov* or the telephone number (404) 562–9031.

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I. Background and Overview

On June 22, 2010 (75 FR 35520), EPA revised the primary SO_2 NAAQS to an hourly standard at a level of 75 parts per billion (ppb), based on a 3-year average of the annual 99th percentile of 1-hour daily maximum concentrations. Pursuant to section 110(a)(1) of the CAA, states are required to submit SIPs meeting the applicable requirements of section 110(a)(2) within three years after promulgation of a new or revised NAAQS or within such shorter period as EPA may prescribe. Section 110(a)(2) requires states to address basic SIP elements such as requirements for monitoring, basic program requirements and legal authority that are designed to assure attainment and maintenance of the NAAQS. States were required to submit such SIPs for the 2010 1-hour SO_2 NAAQS to EPA no later than June 2, 2013.[1]

Today's action is proposing to approve Kentucky's infrastructure SIP submission for the applicable requirements of the 2010 1-hour SO_2 NAAQS. With respect to the interstate transport provisions pertaining to the contribution to nonattainment or interference with maintenance in other states and the visibility requirements of section 110(a)(2)(D)(i)(I) and (II) (prongs 1, 2, and 4), and the minor source program requirements of section 110(a)(2)(C), EPA is not proposing any action at this time regarding these requirements. For the aspects of Kentucky's submittal proposed for approval today, EPA notes that the Agency is not approving any specific rule, but rather proposing that Kentucky's already approved SIP meets certain CAA requirements.

II. What elements are required under sections 110(a)(1) and (2)?

Section 110(a) of the CAA requires states to submit SIPs to provide for the implementation, maintenance, and enforcement of a new or revised NAAQS within three years following the promulgation of such NAAQS, or within such shorter period as EPA may prescribe. Section 110(a) imposes the obligation upon states to make a SIP submission to EPA for a new or revised NAAQS, but the contents of that submission may vary depending upon the facts and circumstances. In particular, the data and analytical tools available at the time the state develops and submits the SIP for a new or revised NAAQS affects the content of the submission. The contents of such SIP submissions may also vary depending upon what provisions the state's existing SIP already contains.

More specifically, section 110(a)(1) provides the procedural and timing requirements for SIPs. Section 110(a)(2) lists specific elements that states must meet for "infrastructure" SIP requirements related to a newly established or revised NAAQS. As mentioned above, these requirements include basic SIP elements such as requirements for monitoring, basic program requirements and legal authority that are designed to assure attainment and maintenance of the NAAQS. The requirements that are the subject of this proposed rulemaking are summarized below and in EPA's September 13, 2013, memorandum entitled "Guidance on Infrastructure State Implementation Plan (SIP) Elements under Clean Air Act Sections 110(a)(1) and 110(a)(2)."[2]

- 110(a)(2)(A): Emission Limits and Other Control Measures
- 110(a)(2)(B): Ambient Air Quality Monitoring/Data System
- 110(a)(2)(C): Programs for Enforcement of Control Measures and for Construction or Modification of Stationary Sources[3]
- 110(a)(2)(D)(i)(I) and (II): Interstate Pollution Transport
- 110(a)(2)(D)(ii): Interstate Pollution Abatement and International Air Pollution
- 110(a)(2)(E): Adequate Resources and Authority, Conflict of Interest, and Oversight of Local Governments and Regional Agencies
- 110(a)(2)(F): Stationary Source Monitoring and Reporting
- 110(a)(2)(G): Emergency Powers
- 110(a)(2)(H): SIP Revisions
- 110(a)(2)(I): Plan Revisions for Nonattainment Areas[4]
- 110(a)(2)(J): Consultation with Government Officials, Public Notification, and Prevention of

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[1] In these infrastructure SIP submissions states generally certify evidence of compliance with sections 110(a)(1) and (2) of the CAA through a combination of state regulations and statutes, some of which have been incorporated into the federally-approved SIP. In addition, certain federally-approved, non-SIP regulations may also be appropriate for demonstrating compliance with sections 110(a)(1) and (2). Throughout this rulemaking, unless otherwise indicated, the term "401 KAR XX:XXX" indicates that the cited regulation has either been approved, or submitted for approval into Kentucky's federally-approved SIP. The State statutes cited from the Kentucky Revised Statutes (also referred to as "KRS") throughout this rulemaking are not approved into the Kentucky SIP, unless otherwise indicated.

[2] Two elements identified in section 110(a)(2) are not governed by the three year submission deadline of section 110(a)(1) because SIPs incorporating necessary local nonattainment area controls are not due within three years after promulgation of a new or revised NAAQS, but rather due at the time the nonattainment area plan requirements are due pursuant to section 172. These requirements are: (1) Submissions required by section 110(a)(2)(C) to the extent that subsection refers to a permit program as required in part D, title I of the CAA; and (2) submissions required by section 110(a)(2)(I) which pertain to the nonattainment planning requirements of part D, title I of the CAA. Today's proposed rulemaking does not address infrastructure elements related to section 110(a)(2)(I) or the nonattainment planning requirements of 110(a)(2)(C).

[3] This rulemaking only addresses requirements for this element as they relate to attainment areas.

[4] As mentioned above, this element is not relevant to today's proposed rulemaking.

Significant Deterioration (PSD) and Visibility Protection
- 110(a)(2)(K): Air Quality Modeling and Submission of Modeling Data
- 110(a)(2)(L): Permitting fees
- 110(a)(2)(M): Consultation and Participation by Affected Local Entities

III. What is EPA's approach to the review of infrastructure SIP submissions?

EPA is acting upon the SIP submission from Kentucky that addresses the infrastructure requirements of CAA sections 110(a)(1) and 110(a)(2) for the 2010 1-hour SO_2 NAAQS. The requirement for states to make a SIP submission of this type arises out of CAA section 110(a)(1). Pursuant to section 110(a)(1), states must make SIP submissions "within 3 years (or such shorter period as the Administrator may prescribe) after the promulgation of a national primary ambient air quality standard (or any revision thereof)," and these SIP submissions are to provide for the "implementation, maintenance, and enforcement" of such NAAQS. The statute directly imposes on states the duty to make these SIP submissions, and the requirement to make the submissions is not conditioned upon EPA's taking any action other than promulgating a new or revised NAAQS. Section 110(a)(2) includes a list of specific elements that "[e]ach such plan" submission must address.

EPA has historically referred to these SIP submissions made for the purpose of satisfying the requirements of CAA sections 110(a)(1) and 110(a)(2) as "infrastructure SIP" submissions. Although the term "infrastructure SIP" does not appear in the CAA, EPA uses the term to distinguish this particular type of SIP submission from submissions that are intended to satisfy other SIP requirements under the CAA, such as "nonattainment SIP" or "attainment plan SIP" submissions to address the nonattainment planning requirements of part D of title I of the CAA, "regional haze SIP" submissions required by EPA rule to address the visibility protection requirements of CAA section 169A, and nonattainment new source review (NNSR) permit program submissions to address the permit requirements of CAA, title I, part D.

Section 110(a)(1) addresses the timing and general requirements for infrastructure SIP submissions, and section 110(a)(2) provides more details concerning the required contents of these submissions. The list of required elements provided in section 110(a)(2) contains a wide variety of disparate provisions, some of which pertain to required legal authority, some of which pertain to required substantive program provisions, and some of which pertain to requirements for both authority and substantive program provisions.[5] EPA therefore believes that while the timing requirement in section 110(a)(1) is unambiguous, some of the other statutory provisions are ambiguous. In particular, EPA believes that the list of required elements for infrastructure SIP submissions provided in section 110(a)(2) contains ambiguities concerning what is required for inclusion in an infrastructure SIP submission.

The following examples of ambiguities illustrate the need for EPA to interpret some section 110(a)(1) and section 110(a)(2) requirements with respect to infrastructure SIP submissions for a given new or revised NAAQS. One example of ambiguity is that section 110(a)(2) requires that "each" SIP submission must meet the list of requirements therein, while EPA has long noted that this literal reading of the statute is internally inconsistent and would create a conflict with the nonattainment provisions in part D of title I of the Act, which specifically address nonattainment SIP requirements.[6] Section 110(a)(2)(I) pertains to nonattainment SIP requirements and part D addresses when attainment plan SIP submissions to address nonattainment area requirements are due. For example, section 172(b) requires EPA to establish a schedule for submission of such plans for certain pollutants when the Administrator promulgates the designation of an area as nonattainment, and section 107(d)(1)(B) allows up to two years, or in some cases three years, for such designations to be promulgated.[7] This ambiguity illustrates that rather than apply all the stated requirements of section 110(a)(2) in a strict literal sense, EPA must determine which provisions of section 110(a)(2) are applicable for a particular infrastructure SIP submission.

Another example of ambiguity within sections 110(a)(1) and 110(a)(2) with respect to infrastructure SIPs pertains to whether states must meet all of the infrastructure SIP requirements in a single SIP submission, and whether EPA must act upon such SIP submission in a single action. Although section 110(a)(1) directs states to submit "a plan" to meet these requirements, EPA interprets the CAA to allow states to make multiple SIP submissions separately addressing infrastructure SIP elements for the same NAAQS. If states elect to make such multiple SIP submissions to meet the infrastructure SIP requirements, EPA can elect to act on such submissions either individually or in a larger combined action.[8] Similarly, EPA interprets the CAA to allow it to take action on the individual parts of one larger, comprehensive infrastructure SIP submission for a given NAAQS without concurrent action on the entire submission. For example, EPA has sometimes elected to act at different times on various elements and sub-elements of the same infrastructure SIP submission.[9]

Ambiguities within sections 110(a)(1) and 110(a)(2) may also arise with respect to infrastructure SIP submission requirements for different NAAQS. Thus, EPA notes that not every element of section 110(a)(2) would be relevant, or as relevant, or relevant in the same way, for each new or revised NAAQS. The states' attendant infrastructure SIP submissions for each NAAQS therefore could be different. For example, the monitoring requirements that a state might need to meet in its infrastructure SIP submission for purposes of section 110(a)(2)(B) could be very different for different pollutants because the content and scope of a state's infrastructure SIP submission to meet this element might be very different for an entirely new NAAQS than for a minor revision to an existing NAAQS.[10]

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[5] For example: Section 110(a)(2)(E)(i) provides that states must provide assurances that they have adequate legal authority under state and local law to carry out the SIP; section 110(a)(2)(C) provides that states must have a SIP-approved program to address certain sources as required by part C of title I of the CAA; and section 110(a)(2)(G) provides that states must have legal authority to address emergencies as well as contingency plans that are triggered in the event of such emergencies.

[6] See, *e.g.*, "Rule To Reduce Interstate Transport of Fine Particulate Matter and Ozone (Clean Air Interstate Rule); Revisions to Acid Rain Program; Revisions to the NO_X SIP Call; Final Rule," 70 FR 25162, at 25163–65 (May 12, 2005) (explaining relationship between timing requirement of section 110(a)(2)(D) versus section 110(a)(2)(I)).

[7] EPA notes that this ambiguity within section 110(a)(2) is heightened by the fact that various subparts of part D set specific dates for submission of certain types of SIP submissions in designated nonattainment areas for various pollutants. Note, *e.g.*, that section 182(a)(1) provides specific dates for submission of emissions inventories for the ozone NAAQS. Some of these specific dates are necessarily later than three years after promulgation of the new or revised NAAQS.

[8] See, *e.g.*, "Approval and Promulgation of Implementation Plans; New Mexico; Revisions to the New Source Review (NSR) State Implementation Plan (SIP); Prevention of Significant Deterioration (PSD) and Nonattainment New Source Review (NNSR) Permitting," 78 FR 4339 (January 22, 2013) (EPA's final action approving the structural PSD elements of the New Mexico SIP submitted by the State separately to meet the requirements of EPA's 2008 $PM_{2.5}$ NSR rule), and "Approval and Promulgation of Air Quality Implementation Plans; New Mexico; Infrastructure and Interstate Transport Requirements for the 2006 $PM_{2.5}$ NAAQS," (78 FR 4337) (January 22, 2013) (EPA's final action on the infrastructure SIP for the 2006 $PM_{2.5}$ NAAQS).

[9] On December 14, 2007, the State of Tennessee, through the Tennessee Department of Environment and Conservation, made a SIP revision to EPA demonstrating that the State meets the requirements of sections 110(a)(1) and (2). EPA proposed action for infrastructure SIP elements (C) and (J) on January 23, 2012 (77 FR 3213) and took final action on March 14, 2012 (77 FR 14976). On April 16, 2012 (77 FR 22533) and July 23, 2012 (77 FR 42997), EPA took separate proposed and final actions on all other section 110(a)(2) infrastructure SIP elements of Tennessee's December 14, 2007, submittal.

EPA notes that interpretation of section 110(a)(2) is also necessary when EPA reviews other types of SIP submissions required under the CAA. Therefore, as with infrastructure SIP submissions, EPA also has to identify and interpret the relevant elements of section 110(a)(2) that logically apply to these other types of SIP submissions. For example, section 172(c)(7) requires that attainment plan SIP submissions required by part D have to meet the "applicable requirements" of section 110(a)(2). Thus, for example, attainment plan SIP submissions must meet the requirements of section 110(a)(2)(A) regarding enforceable emission limits and control measures and section 110(a)(2)(E)(i) regarding air agency resources and authority. By contrast, it is clear that attainment plan SIP submissions required by part D would not need to meet the portion of section 110(a)(2)(C) that pertains to the PSD program required in part C of title I of the CAA, because PSD does not apply to a pollutant for which an area is designated nonattainment and thus subject to part D planning requirements. As this example illustrates, each type of SIP submission may implicate some elements of section 110(a)(2) but not others.

Given the potential for ambiguity in some of the statutory language of section 110(a)(1) and section 110(a)(2), EPA believes that it is appropriate to interpret the ambiguous portions of section 110(a)(1) and section 110(a)(2) in the context of acting on a particular SIP submission. In other words, EPA assumes that Congress could not have intended that each and every SIP submission, regardless of the NAAQS in question or the history of SIP development for the relevant pollutant, would meet each of the requirements, or meet each of them in the same way. Therefore, EPA has adopted an approach under which it reviews infrastructure SIP submissions against the list of elements in section 110(a)(2), but only to the extent each element applies for that particular NAAQS.

Historically, EPA has elected to use guidance documents to make recommendations to states for infrastructure SIPs, in some cases conveying needed interpretations on newly arising issues and in some cases conveying interpretations that have already been developed and applied to individual SIP submissions for particular elements.[11] EPA most recently issued guidance for infrastructure SIPs on September 13, 2013 (2013 Guidance).[12] EPA developed this document to provide states with up-to-date guidance for infrastructure SIPs for any new or revised NAAQS. Within this guidance, EPA describes the duty of states to make infrastructure SIP submissions to meet basic structural SIP requirements within three years of promulgation of a new or revised NAAQS. EPA also made recommendations about many specific subsections of section 110(a)(2) that are relevant in the context of infrastructure SIP submissions.[13] The guidance also discusses the substantively important issues that are germane to certain subsections of section 110(a)(2). Significantly, EPA interprets sections 110(a)(1) and 110(a)(2) such that infrastructure SIP submissions need to address certain issues and need not address others. Accordingly, EPA reviews each infrastructure SIP submission for compliance with the applicable statutory provisions of section 110(a)(2), as appropriate.

As an example, section 110(a)(2)(E)(ii) is a required element of section 110(a)(2) for infrastructure SIP submissions. Under this element, a state must meet the substantive requirements of section 128, which pertain to state boards that approve permits or enforcement orders and heads of executive agencies with similar powers. Thus, EPA reviews infrastructure SIP submissions to ensure that the state's implementation plan appropriately addresses the requirements of section 110(a)(2)(E)(ii) and section 128. The 2013 Guidance explains EPA's interpretation that there may be a variety of ways by which states can appropriately address these substantive statutory requirements, depending on the structure of an individual state's permitting or enforcement program (*e.g.,* whether permits and enforcement orders are approved by a multi-member board or by a head of an executive agency). However they are addressed by the state, the substantive requirements of section 128 are necessarily included in EPA's evaluation of infrastructure SIP submissions because section 110(a)(2)(E)(ii) explicitly requires that the state satisfy the provisions of section 128.

As another example, EPA's review of infrastructure SIP submissions with respect to the PSD program requirements in sections 110(a)(2)(C), (D)(i)(II), and (J) focuses upon the structural PSD program requirements contained in part C and EPA's PSD regulations. Structural PSD program requirements include provisions necessary for the PSD program to address all regulated sources and new source review (NSR) pollutants, including greenhouse gases (GHGs). By contrast, structural PSD program requirements do not include provisions that are not required under EPA's regulations at 40 CFR 51.166 but are merely available as an option for the state, such as the option to provide grandfathering of complete permit applications with respect to the 2012 fine particulate matter ($PM_{2.5}$) NAAQS. Accordingly, the latter optional provisions are types of provisions EPA considers irrelevant in the context of an infrastructure SIP action.

For other section 110(a)(2) elements, however, EPA's review of a state's infrastructure SIP submission focuses on assuring that the state's SIP meets basic structural requirements. For example, section 110(a)(2)(C) includes, among other things, the requirement that states have a program to regulate minor new sources. Thus, EPA evaluates whether the state has an EPA-approved minor NSR program and whether the program addresses the pollutants relevant to that NAAQS. In the context of acting on an infrastructure SIP submission, however, EPA does not think it is necessary to conduct a review of each and every provision of a state's existing minor source program (*i.e.,* already in the existing SIP) for compliance with the requirements of the CAA and EPA's regulations that pertain to such programs.

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[10] For example, implementation of the 1997 $PM_{2.5}$ NAAQS required the deployment of a system of new monitors to measure ambient levels of that new indicator species for the new NAAQS.

[11] EPA notes, however, that nothing in the CAA requires EPA to provide guidance or to promulgate regulations for infrastructure SIP submissions. The CAA directly applies to states and requires the submission of infrastructure SIP submissions, regardless of whether or not EPA provides guidance or regulations pertaining to such submissions. EPA elects to issue such guidance in order to assist states, as appropriate.

[12] "Guidance on Infrastructure State Implementation Plan (SIP) Elements under Clean Air Act sections 110(a)(1) and 110(a)(2)," Memorandum from Stephen D. Page, September 13, 2013.

[13] EPA's September 13, 2013, guidance did not make recommendations with respect to infrastructure SIP submissions to address section 110(a)(2)(D)(i)(I). EPA issued the guidance shortly after the U.S. Supreme Court agreed to review the D.C. Circuit decision in *EME Homer City,* 696 F.3d7 (D.C. Cir. 2012) which had interpreted the requirements of section 110(a)(2)(D)(i)(I). In light of the uncertainty created by ongoing litigation, EPA elected not to provide additional guidance on the requirements of section 110(a)(2)(D)(i)(I) at that time. As the guidance is neither binding nor required by statute, whether EPA elects to provide guidance on a particular section has no impact on a state's CAA obligations.

With respect to certain other issues, EPA does not believe that an action on a state's infrastructure SIP submission is necessarily the appropriate type of action in which to address possible deficiencies in a state's existing SIP. These issues include: (i) Existing provisions related to excess emissions from sources during periods of startup, shutdown, or malfunction that may be contrary to the CAA and EPA's policies addressing such excess emissions ("SSM"); (ii) existing provisions related to "director's variance" or "director's discretion" that may be contrary to the CAA because they purport to allow revisions to SIP-approved emissions limits while limiting public process or not requiring further approval by EPA; and (iii) existing provisions for PSD programs that may be inconsistent with current requirements of EPA's "Final NSR Improvement Rule," 67 FR 80186 (December 31, 2002), as amended by 72 FR 32526 (June 13, 2007) ("NSR Reform"). Thus, EPA believes it may approve an infrastructure SIP submission without scrutinizing the totality of the existing SIP for such potentially deficient provisions and may approve the submission even if it is aware of such existing provisions.[14] It is important to note that EPA's approval of a state's infrastructure SIP submission should not be construed as explicit or implicit re-approval of any existing potentially deficient provisions that relate to the three specific issues just described.

EPA's approach to review of infrastructure SIP submissions is to identify the CAA requirements that are logically applicable to that submission. EPA believes that this approach to the review of a particular infrastructure SIP submission is appropriate, because it would not be reasonable to read the general requirements of section 110(a)(1) and the list of elements in 110(a)(2) as requiring review of each and every provision of a state's existing SIP against all requirements in the CAA and EPA regulations merely for purposes of assuring that the state in question has the basic structural elements for a functioning SIP for a new or revised NAAQS. Because SIPs have grown by accretion over the decades as statutory and regulatory requirements under the CAA have evolved, they may include some outmoded provisions and historical artifacts. These provisions, while not fully up to date, nevertheless may not pose a significant problem for the purposes of "implementation, maintenance, and enforcement" of a new or revised NAAQS when EPA evaluates adequacy of the infrastructure SIP submission. EPA believes that a better approach is for states and EPA to focus attention on those elements of section 110(a)(2) of the CAA most likely to warrant a specific SIP revision due to the promulgation of a new or revised NAAQS or other factors.

For example, EPA's 2013 Guidance gives simpler recommendations with respect to carbon monoxide than other NAAQS pollutants to meet the visibility requirements of section 110(a)(2)(D)(i)(II), because carbon monoxide does not affect visibility. As a result, an infrastructure SIP submission for any future new or revised NAAQS for carbon monoxide need only state this fact in order to address the visibility prong of section 110(a)(2)(D)(i)(II).

Finally, EPA believes that its approach with respect to infrastructure SIP requirements is based on a reasonable reading of sections 110(a)(1) and 110(a)(2) because the CAA provides other avenues and mechanisms to address specific substantive deficiencies in existing SIPs. These other statutory tools allow EPA to take appropriately tailored action, depending upon the nature and severity of the alleged SIP deficiency. Section 110(k)(5) authorizes EPA to issue a "SIP call" whenever the Agency determines that a state's SIP is substantially inadequate to attain or maintain the NAAQS, to mitigate interstate transport, or to otherwise comply with the CAA.[15] Section 110(k)(6) authorizes EPA to correct errors in past actions, such as past approvals of SIP submissions.[16] Significantly, EPA's determination that an action on a state's infrastructure SIP submission is not the appropriate time and place to address all potential existing SIP deficiencies does not preclude EPA's subsequent reliance on provisions in section 110(a)(2) as part of the basis for action to correct those deficiencies at a later time. For example, although it may not be appropriate to require a state to eliminate all existing inappropriate director's discretion provisions in the course of acting on an infrastructure SIP submission, EPA believes that section 110(a)(2)(A) may be among the statutory bases that EPA relies upon in the course of addressing such deficiency in a subsequent action.[17]

IV. What is EPA's analysis of how Kentucky addressed the elements of the sections 110(a)(1) and (2) "Infrastructure" provisions?

Kentucky's April 26, 2013, infrastructure submission addresses the provisions of sections 110(a)(1) and (2) as described below.

1. 110(a)(2)(A) *Emission Limits and Other Control Measures:* Section 110(a)(2)(A) requires that each implementation plan include enforceable emission limitations and other control measures, means, or techniques (including economic incentives such as fees, marketable permits, and auctions of emissions rights), as well as schedules and timetables for compliance, as may be necessary or appropriate to meet the applicable requirements. These requirements are met through Kentucky Revised Statute (KRS) Chapter 224 Section 10–100 (KRS 224.10–100), which provides the KDAQ the authority to administer all rules, regulations, and orders promulgated under Chapter 224, and to provide for the prevention, abatement, and control of all water, land, and air pollution.

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[14] By contrast, EPA notes that if a state were to include a new provision in an infrastructure SIP submission that contained a legal deficiency, such as a new exemption for excess emissions during SSM events, then EPA would need to evaluate that provision for compliance against the rubric of applicable CAA requirements in the context of the action on the infrastructure SIP.

[15] For example, EPA issued a SIP call to Utah to address specific existing SIP deficiencies related to the treatment of excess emissions during SSM events. See "Finding of Substantial Inadequacy of Implementation Plan; Call for Utah State Implementation Plan Revisions," 74 FR 21639 (April 18, 2011).

[16] EPA has used this authority to correct errors in past actions on SIP submissions related to PSD programs. See "Limitation of Approval of Prevention of Significant Deterioration Provisions Concerning Greenhouse Gas Emitting-Sources in State Implementation Plans; Final Rule," 75 FR 82536 (December 30, 2010). EPA has previously used its authority under CAA section 110(k)(6) to remove numerous other SIP provisions that the Agency determined it had approved in error. See, *e.g.,* 61 FR 38664 (July 25, 1996) and 62 FR 34641 (June 27, 1997) (corrections to American Samoa, Arizona, California, Hawaii, and Nevada SIPs); 69 FR 67062 (November 16, 2004) (corrections to California SIP); and 74 FR 57051 (November 3, 2009) (corrections to Arizona and Nevada SIPs).

[17] See, *e.g.,* EPA's disapproval of a SIP submission from Colorado on the grounds that it would have included a director's discretion provision inconsistent with CAA requirements, including section 110(a)(2)(A). See, *e.g.,* 75 FR 42342 at 42344 (July 21, 2010) (proposed disapproval of director's discretion provisions); 76 FR 4540 (Jan. 26, 2011) (final disapproval of such provisions).

KDAQ cited to chapters and associated Kentucky Administrative Regulations (KAR) under Title 401 to demonstrate that the Commonwealth meets the requirements of this element, including the following:

- Chapter 50 *General Administrative Procedures:* 401 KAR 50:010. *Definitions for 401 KAR Chapter 50;* 401 KAR 50:012. *General application;* 401 KAR 50:015. *Documents incorporated by reference;* 401 KAR 50:020. *Air quality control regions;* 401 KAR 50:025. *Classification of counties;* 401 KAR 50:040. *Air quality models;* 401 KAR 50:042. *Good engineering practice stack height;* 401 KAR 50:045. *Performance tests;* 401 KAR 50:047. *Test procedures for capture efficiency;* 401 KAR 50:050. *Monitoring;* 401 KAR 50:055. *General compliance requirements;* and 401 KAR 50:060. *Enforcement.*
- Chapter 51 *Attainment and Maintenance of the National Ambient Air Quality Standards:* 401 KAR 51:001. *Definitions for 401 KAR Chapter 51;* 401 KAR 51:005. *Purpose and General Provisions;* 401 KAR 51:010. *Attainment Status Designations;* 401 KAR 51:017. *Prevention of significant deterioration of air quality;* 401 KAR 51:052. *Review of new sources in or impacting upon nonattainment areas.*
- Chapter 52 Permits, Registrations, and Prohibitory Rules: 401 KAR 52:001. Definitions for 401 KAR Chapter 52; 401 KAR 52:020. Title V permits;[18] 401 KAR 52:030. Federally-enforceable permits for nonmajor sources; 401 KAR 52:090. Prohibitorv rule for hot mix asphalt plants; 401 KAR 53:005. General provisions; 401 KAR 53:010. Ambient air quality standards.

Collectively these regulations establish enforceable emissions limitations and other control measures, means or techniques, for activities that contribute to SO_2 concentrations in the ambient air and provide authority for KDAQ to establish such limits and measures as well as schedules for compliance to meet the applicable requirements of the CAA. EPA has made the preliminary determination that the provisions contained in these regulations, and Kentucky's statute are adequate for enforceable emission limitations and other control measures, means, or techniques, as well as schedules and timetables for compliance for the 2010 1-hour SO_2 NAAQS in the Commonwealth.

In this action, EPA is not proposing to approve or disapprove any existing Commonwealth provisions with regard to excess emissions during SSM operations at a facility. EPA believes that a number of states have SSM provisions which are contrary to the CAA and existing EPA guidance, "State Implementation Plans: Policy Regarding Excess Emissions During Malfunctions, Startup, and Shutdown" (September 20, 1999), and the Agency is addressing such state regulations in a separate action.[19]

Additionally, in this action, EPA is not proposing to approve or disapprove any existing state rules with regard to director's discretion or variance provisions. EPA believes that a number of states have such provisions which are contrary to the CAA and existing EPA guidance (52 FR 45109 (November 24, 1987)), and the Agency plans to take action in the future to address such state regulations. In the meantime, EPA encourages any state having a director's discretion or variance provision which is contrary to the CAA and EPA guidance to take steps to correct the deficiency as soon as possible.

2. 110(a)(2)(B) *Ambient Air Quality Monitoring/Data System:* Section 110(a)(2)(B) requires SIPs to provide for establishment and operation of appropriate devices, methods, systems, and procedures necessary to (i) monitor, compile, and analyze data on ambient air quality, and (ii) upon request, make such data available to the Administrator. These requirements are met through KRS 224.10–100 (22), which provides KDAQ the authority to require the installation, maintenance, and use of equipment, devices, or tests and methodologies to monitor the nature and amount of any substance emitted into the ambient air and to provide the information to the cabinet.

KDAQ cites the following regulations to demonstrate that the Commonwealth meets the requirements of this element: 401 KAR 50:050. *Monitoring;* 401 KAR 51:017. *Prevention of significant deterioration of air quality;* and 401 KAR 51:052. *Review of new sources in or impacting upon nonattainment areas;* 401 KAR 53:005. *General provisions;* 401 KAR 53:010. *Ambient air quality standards.*

These SIP-approved rules and Kentucky's statute, along with Kentucky's Ambient Air Monitoring Network Plan, provide for the establishment and operation of ambient air quality monitors, the compilation and analysis of ambient air quality data, and the submission of these data to EPA upon request. Annually, states develop and submit to EPA for approval statewide ambient monitoring network plans consistent with the requirements of 40 CFR parts 50, 53, and 58. The annual network plan involves an evaluation of any proposed changes to the monitoring network, includes the annual ambient monitoring network design plan and a certified evaluation of the agency's ambient monitors and auxiliary support equipment.[20] KDAQ's monitoring network plan was submitted on July 1, 2015, and approved by EPA on October 28, 2015. Kentucky's approved monitoring network plan can be accessed at *www.regulations.gov* using Docket ID No. EPA–R04–OAR–2014–0426. EPA has made the preliminary determination that Kentucky's SIP and practices are adequate for the ambient air quality monitoring and data system related to the 2010 1-hour SO_2 NAAQS.

3. 110(a)(2)(C) *Programs for Enforcement of Control Measures and for Construction or Modification of Stationary Sources:* This element consists of three sub-elements: Enforcement, state-wide regulation of new and modified minor sources and minor modifications of major sources, and preconstruction permitting of major sources and major modifications in areas designated attainment or unclassifiable for the subject NAAQS as required by CAA title I part C (*i.e.,* the major source PSD program). These requirements are met through 401 KAR 50:060. *Enforcement;* 401 KAR 51:017. *Prevention of significant deterioration of air quality;* and 401 KAR 51:052. *Review of new sources in or impacting upon nonattainment areas.* Collectively, these regulations enable KDAQ to regulate sources contributing to the 2010 1-hour SO_2 NAAQS. EPA's analysis of how these provisions of Kentucky's SIP address each sub-element (with the exception of the minor source program requirements, as set forth below) is described below.

Enforcement: KDAQ's SIP-approved regulation, 401 KAR 50:060. *Enforcement,* provides for enforcement of SO_2 emission limits and control measures through permit and compliance schedule modifications and revocations, and authorizes administrative penalties and injunctive relief, citing to statutory civil penalty and injunctive relief provisions of KRS

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[18] This rule is not approved into Kentucky's federally-approved SIP.

[19] On June 12, 2015, EPA published a final action entitled, "State Implementation Plans: Response to Petition for Rulemaking; Restatement and Update of EPA's SSM Policy Applicable to SIPs; Findings of Substantial Inadequacy; and SIP Calls to Amend Provisions Applying to Excess Emissions During Periods of Startup, Shutdown, and Malfunction." *See* 80 FR 33840.

[20] On occasion, proposed changes to the monitoring network are evaluated outside of the network plan approval process in accordance with 40 CFR part 58.

224.99–010. EPA has made the preliminary determination that Kentucky's SIP is adequate for enforcement related to the 2010 1-hour SO_2 NAAQS.

PSD Permitting for Major Sources: EPA interprets the PSD sub-element to require that a state's infrastructure SIP submission for a particular NAAQS demonstrate that the state has a complete PSD permitting program in place covering the structural PSD requirements for all regulated NSR pollutants. A state's PSD permitting program is complete for this sub-element (and prong 3 of D(i) and J related to PSD) if EPA has already approved or is simultaneously approving the state's SIP with respect to all structural PSD requirements that are due under the EPA regulations or the CAA on or before the date of the EPA's proposed action on the infrastructure SIP submission. For the 2010 1-hour SO_2 NAAQS, Kentucky's authority to regulate new and modified sources to assist in the protection of air quality in attainment or unclassifiable areas is established in KAR Chapter 51—*Attainment and Maintenance of the National Ambient Air Quality Standards,* which describes the permit requirements for new major sources or major modifications of existing sources in areas classified as attainment or unclassifiable under section 107(d)(1)(A)(ii) or (iii) of the CAA. These requirements are designed to ensure that sources in areas attaining the NAAQS at the time of designations prevent any significant deterioration in air quality. Chapter 51 also establishes the permitting requirements for areas in or around nonattainment areas and provides the Commonwealth's statutory authority to enforce regulations relating to attainment and maintenance of the NAAQS.

Kentucky's infrastructure SIP submission demonstrates that new major sources and major modifications in areas of the Commonwealth designated attainment or unclassifiable for the specified NAAQS are subject to a federally-approved PSD permitting program meeting all the current structural requirements of part C of title I of the CAA to satisfy the infrastructure SIP PSD elements.[21] EPA has made the preliminary determination that Kentucky's SIP is adequate for PSD permitting for major sources related to the 2010 1-hour SO_2 NAAQS.

Regulation of minor sources and minor modifications: Section 110(a)(2)(C) also requires the SIP to include provisions that govern the minor source preconstruction program that regulates emissions of the 2010 1-hour SO_2 NAAQS. EPA is not proposing any action in this rulemaking related to the regulation of minor sources and minor modifications under section 110(a)(2)(C) and will consider these requirements in relation to Kentucky's 2010 1-hour SO_2 NAAQS infrastructure submission in a separate rulemaking.

4. 110(a)(2)(D)(i)(I) and (II) *Interstate Pollution Transport:* Section 110(a)(2)(D)(i) has two components: 110(a)(2)(D)(i)(I) and 110(a)(2)(D)(i)(II). Each of these components has two subparts resulting in four distinct components, commonly referred to as "prongs," that must be addressed in infrastructure SIP submissions. The first two prongs, which are codified in section 110(a)(2)(D)(i)(I), are provisions that prohibit any source or other type of emissions activity in one state from contributing significantly to nonattainment of the NAAQS in another state ("prong 1"), and interfering with maintenance of the NAAQS in another state ("prong 2"). The third and fourth prongs, which are codified in section 110(a)(2)(D)(i)(II), are provisions that prohibit emissions activity in one state from interfering with measures required to prevent significant deterioration of air quality in another state ("prong 3"), or to protect visibility in another state ("prong 4").

110(a)(2)(D)(i)(I)—prongs 1 and 2: EPA is not proposing any action in this rulemaking related to the interstate transport provisions pertaining to the contribution to nonattainment or interference with maintenance in other states of section 110(a)(2)(D)(i)(I) (prongs 1 and 2) because Kentucky's 2010 1-hour SO_2 NAAQS infrastructure submission did not address prongs 1 and 2.

110(a)(2)(D)(i)(II)—prong 3: With regard to section 110(a)(2)(D)(i)(II), the PSD element, referred to as prong 3, this requirement may be met by a state's confirmation in an infrastructure SIP submission that new major sources and major modifications in the state are subject to: A PSD program meeting all the current structural requirements of part C of title I of the CAA, or (if the state contains a nonattainment area that has the potential to impact PSD in another state) to a NNSR program. As discussed in more detail above under section 110(a)(2)(C), Kentucky's SIP contains the relevant SIP revisions necessary to satisfy the structural PSD requirements of prong 3. Kentucky's SIP-approved NNSR program is found at 401 KAR 51:052. *Review of new sources in or impacting upon nonattainment areas.* EPA has made the preliminary determination that Kentucky's SIP is adequate for interstate transport for permitting of major sources and major modifications related to the 2010 1-hour SO_2 NAAQS for section 110(a)(2)(D)(i)(II) (prong 3).

110(a)(2)(D)(i)(II)—prong 4: EPA is not proposing any action in this rulemaking related to the interstate transport provisions pertaining to visibility protection in other states of section 110(a)(2)(D)(i)(II) (prong 4) and will consider these requirements in relation to Kentucky's 2010 1-hour SO_2 NAAQS infrastructure submission in a separate rulemaking.

5. 110(a)(2)(D)(ii) *Interstate and International Transport Provisions:* Section 110(a)(2)(D)(ii) requires SIPs to include provisions ensuring compliance with sections 115 and 126 of the Act, relating to interstate and international pollution abatement. Regulation 401 KAR 51:010. *Attainment Status Designations* designates the status of all areas of the Commonwealth of Kentucky with regard to attainment of the NAAQS. Regulation 401 KAR 51:017. *Prevention of significant deterioration of air quality* and Regulation 401 KAR 51:052. *Review of new sources in or impacting upon nonattainment areas,* Section 1, require Kentucky to provide notice to nearby states that may be affected by proposed major source modifications. These regulations cite to Federal notification requirements under 40 CFR Sections 51.166 and 52.21, and to 401 KAR 52:100. *Public, affected state, and US. EPA review,* Section 6, which requires that public notice for permit actions be provided to affected states. Additionally, Kentucky does not have any pending obligation under sections 115 and 126 of the CAA. EPA has made the preliminary determination that Kentucky's SIP is adequate for ensuring compliance with the applicable requirements relating to interstate and international pollution abatement for the 2010 1-hour SO_2 NAAQS.

6. 110(a)(2)(E) *Adequate Resources and Authority, Conflict of Interest, and Oversight of Local Governments and Regional Agencies:* Section 110(a)(2)(E) requires that each implementation plan provide (i) necessary assurances that the state will have adequate personnel, funding, and authority under state law to carry out its implementation plan, (ii) that the state comply with the requirements respecting state boards pursuant to section 128 of the Act, and (iii) necessary assurances that, where

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[21] For more information concerning how the Kentucky infrastructure SIP submission currently meets applicable structural PSD program requirements, see the technical support document in the docket for today's rulemaking.

the state has relied on a local or regional government, agency, or instrumentality for the implementation of any plan provision, the state has responsibility for ensuring adequate implementation of such plan provisions. EPA is proposing to approve Kentucky's SIP submission as meeting the requirements of sub-elements 110(a)(2)(E)(i), (ii), and (iii).

In support of EPA's proposal to approve elements 110(a)(2)(E)(i) and (iii), KDAQ's infrastructure submission demonstrates that it is responsible for promulgating rules and regulations for the NAAQS, emissions standards, general policies, a system of permits, fee schedules for the review of plans, and other planning needs. With respect to having the necessary funding and authority to implement the Kentucky SIP, Kentucky regulation, 401 KAR 50:038. *Air Emissions Fee,* and the following State statutes support sub-elements (i) and (iii): KRS 224.10–100. *Powers and Duties of the Cabinet* and KRS 224.10–020. *Departments within the cabinet—Offices and divisions within the departments—Appointments.* As evidence of the adequacy of KDAQ's resources with respect to sub-elements (i) and (iii), EPA submitted a letter to KDAQ on March 12, 2015, outlining 105 grant commitments and current status of these commitments for fiscal year 2014. The letter EPA submitted to KDAQ can be accessed at *www.regulations.gov* using Docket ID No. EPA–R04–OAR–2014–0426. Annually, states update these grant commitments based on current SIP requirements, air quality planning, and applicable requirements related to the NAAQS. There were no outstanding issues in relation to the SIP for fiscal year 2014, therefore, KDAQ's grants were finalized and closed out. In addition, the requirements of 110(a)(2)(E)(i) and (iii) are met when EPA performs a completeness determination for each SIP submittal. This determination ensures that each submittal provides evidence that adequate personnel, funding, and legal authority under state law has been used to carry out the state's implementation plan and related issues. KDAQ's authority is included in all prehearings and final SIP submittal packages for approval by EPA. EPA has made the preliminary determination that Kentucky has adequate resources for implementation of the 2010 1-hour SO_2 NAAQS. Accordingly, EPA is proposing to approve Kentucky's infrastructure SIP submission with respect to section 110(a)(2)(E)(i) and (iii).

Section 110(a)(2)(E)(ii) requires that Kentucky comply with section 128 of the CAA. Section 128 requires at 128(a)(1) the majority of members of the state board or body which approves permits or enforcement orders represent the public interest and do not derive any significant portion of their income from persons subject to permitting or enforcement orders under the CAA; and 128(a)(2) any potential conflicts of interest by such board or body, or the head of an executive agency with similar, powers be adequately disclosed. For purposes of section 128(a)(1), Kentucky has no boards or bodies with authority over air pollution permits or enforcement actions. Such matters are instead handled by the Director of the KDAQ. As such, a "board or body" is not responsible for approving permits or enforcement orders in Kentucky, and the requirements of section 128(a)(1) are not applicable. For purposes of section 128(a)(2), KDAQ's SIP has been updated. On October 3, 2012, EPA took final action to approve incorporation of KRS Chapters 11A.020, 11A.030, 11A.040 and Chapters 224.10–020 and 224.10–100 into the SIP to address the conflict of interest requirements of section 128. *See* 77 FR 60307. These SIP-approved state statutes establish the powers and duties of the cabinet, departments within the cabinet, and offices and divisions within such departments (Chapters 224.10–020 and 224.10–100), and support sub-element (ii) by requiring adequate disclosures of potential conflicts (KRS 11A.020. *Public servant prohibited from certain conduct—Exception—Disclosure of personal or private interest*) and otherwise ensuring that public officers and servants do not engage in activities that may present a conflict of interest (KRS 11A.030 *Considerations in determination to abstain from action on official decision—Advisory opinion;* and KRS 11A.040 *Acts prohibited for public servant or officer—Exception*). With the incorporation of these regulations and statutes into the Kentucky SIP, EPA has made the preliminary determination that the Commonwealth has adequately addressed the requirements of section 128(a)(2), and accordingly has met the requirements of section 110(a)(2)(E)(ii) with respect to infrastructure SIP requirements. Thus, EPA is proposing approval of KDAQ's infrastructure SIP submission for the 2010 1-hour SO_2 NAAQS with respect to section 110(a)(2)(E)(ii).

7. 110(a)(2)(F) *Stationary Source Monitoring and Reporting:* Section 110(a)(2)(F) requires SIPs to meet applicable requirements addressing (i) the installation, maintenance, and replacement of equipment, and the implementation of other necessary steps, by owners or operators of stationary sources to monitor emissions from such sources, (ii) periodic reports on the nature and amounts of emissions and emissions related data from such sources, and (iii) correlation of such reports by the state agency with any emission limitations or standards established pursuant to this section, which reports shall be available at reasonable times for public inspection. The Kentucky infrastructure submission describes how the major source and minor source emission inventory programs collect emission data throughout the Commonwealth and ensure the quality of such data. Kentucky meets these requirements through Chapter 50 *General Administrative Procedures,* specifically 401 KAR 50:050 *Monitoring.* 401 KAR 50:050, Section 1, *Monitoring Records and Reporting,* states that the cabinet may require a facility to install, use, and maintain stack gas and ambient air monitoring equipment and to establish and maintain records, and make periodic emission reports at intervals prescribed by the cabinet. 401 KAR 50:050 *Monitoring,* Section 1, *Monitoring, Records, and Reporting,* establishes the requirements for the installation, use, and maintenance of stack gas and ambient air monitoring equipment, and authorizes the cabinet to require the owner or operator of any affected facility to establish and maintain records for this equipment and make periodic emission reports at intervals prescribed by the cabinet. Also, KRS 224.10–100 (23) requires that any person engaged in any operation regulated pursuant to this chapter file with the cabinet reports containing information as to location, size, height, rate of emission or discharge, and composition of any substance discharged or emitted into the ambient air or into the waters or onto the land of the Commonwealth, and such other information the cabinet may require. In addition, EPA is unaware of any provision preventing the use of credible evidence in the Kentucky SIP.[22]

Additionally, Kentucky is required to submit emissions data to EPA for purposes of the National Emissions Inventory (NEI). The NEI is EPA's central repository for air emissions data. EPA published the Air Emissions

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[22] "*Credible Evidence,*" makes allowances for owners and/or operators to utilize "any credible evidence or information relevant" to demonstrate compliance with applicable requirements if the appropriate performance or compliance test had been performed, for the purpose of submitting compliance certification and can be used to establish whether or not an owner or operator has violated or is in violation of any rule or standard.

Reporting Rule (AERR) on December 5, 2008, which modified the requirements for collecting and reporting air emissions data (73 FR 76539). The AERR shortened the time states had to report emissions data from 17 to 12 months, giving states one calendar year to submit emissions data. All states are required to submit a comprehensive emissions inventory every three years and report emissions for certain larger sources annually through EPA's online Emissions Inventory System. States report emissions data for the six criteria pollutants and the precursors that form them—nitrogen oxides, SO_2, ammonia, lead, carbon monoxide, particulate matter, and volatile organic compounds. Many states also voluntarily report emissions of hazardous air pollutants. Kentucky made its latest update to the NEI on November 6, 2014. EPA compiles the emissions data, supplementing it where necessary, and releases it to the general public through the Web site *http://www.epa.gov/ttn/chief/eiinformation.html.* EPA has made the preliminary determination that Kentucky's SIP and practices are adequate for the stationary source monitoring systems related to the 2010 1-hour SO_2 NAAQS. Accordingly, EPA is proposing to approve Kentucky's infrastructure SIP submission with respect to section 110(a)(2)(F).

8. 110(a)(2)(G) *Emergency Powers:* This section requires that states demonstrate authority comparable with section 303 of the CAA and adequate contingency plans to implement such authority. Kentucky's infrastructure SIP submission identifies air pollution emergency episodes and preplanned abatement strategies as outlined in the following Kentucky regulations in Chapter 55 *Emergency Episodes,* specifically: 401 KAR 55:005. *Significant harm criteria,* 401 KAR 55:010. *Episode Criteria,* and 401 KAR 55:015. *Episode Declaration.* 401 KAR 55:005. *Significant Harm Criteria,* Section 1, *Purpose,* defines those levels of pollutant concentration which must be prevented in order to avoid significant harm to the health of persons. 401 KAR 55:010. *Episodic Criteria,* defines those levels of pollutant concentrations which justify the proclamation of an air pollution alert, air pollution warning, an air pollution emergency. 401 KAR 55:015. *Episode Declaration,* provides for the curtailment or reduction of processes or operations which emit an air contaminant or an air contaminant precursor whose criteria has been reached and are located in the affected areas for which an episode level has been declared.

In addition, KRS 224.10–100 *Powers and duties of cabinet* and KRS 224.10–410 *Order for discontinuance, abatement, or alleviation of condition or activity without hearing—Subsequent hearing,* establish the authority for Kentucky's secretary to issue orders to person(s) for discontinuance, abatement, or alleviation of any condition or activity without hearing because the condition or activity presents a danger to the health or welfare of the people of the state, and for the cabinet to require adoption of any remedial measures deemed necessary. EPA has made the preliminary determination that Kentucky's SIP, and state laws are adequate for emergency powers related to the 2010 1-hour SO_2 NAAQS. Accordingly, EPA is proposing to approve Kentucky's infrastructure SIP submission with respect to section 110(a)(2)(G).

9. 110(a)(2)(H) *SIP Revisions:* Section 110(a)(2)(H), in summary, requires each SIP to provide for revisions of such plan (i) as may be necessary to take account of revisions of such national primary or secondary ambient air quality standard or the availability of improved or more expeditious methods of attaining such standard, and (ii) whenever the Administrator finds that the plan is substantially inadequate to attain the NAAQS or to otherwise comply with any additional applicable requirements. As previously discussed, KDAQ is responsible for adopting air quality rules and revising SIPs as needed to attain or maintain the NAAQS. Kentucky has the ability and authority to respond to calls for SIP revisions, and has provided a number of SIP revisions over the years for implementation of the NAAQS.

KDAQ is responsible for adopting air quality rules and revising SIPs as needed to attain or maintain the NAAQS in Kentucky. 401 KAR Chapter 53 *Ambient Air Quality* and Chapter 51 *Attainment and Maintenance of the National Ambient Air Quality Standards* grant KDAQ the broad authority to implement the CAA, and as such, provides KDAQ the authority to prepare and develop, after proper study, a comprehensive plan for the prevention of air pollution. These statutes also provide KDAQ the ability and authority to respond to calls for SIP revisions, and KDAQ has provided a number of SIP revisions over the years for implementation of the NAAQS. Additionally, 401 KAR 53:010 outlines the ambient air quality standards necessary for the protection of the public health, the general welfare, and the property and people in the Commonwealth and states that within 60 days of promulgation or revision of any NAAQS by EPA, the cabinet will initiate a process to promulgate or review this administrative regulation. 401 KAR 51:010. *Attainment Status Designations* provides provisions for the Cabinet to review applicable data and submit to EPA proposed revisions to the list of attainment-nonattainment areas. EPA has made the preliminary determination that Kentucky adequately demonstrates a commitment to provide future SIP revisions related to the 2010 1-hour SO_2 NAAQS when necessary. Accordingly, EPA is proposing to approve Kentucky's infrastructure SIP submission for the 2010 1-hour SO_2 NAAQS with respect to section 110(a)(2)(H).

10. 110(a)(2)(J) *Consultation with Government Officials, Public Notification, and PSD and Visibility Protection:* EPA is proposing to approve Kentucky's infrastructure SIP submission for the 2010 1-hour SO_2 NAAQS with respect to the general requirement in section 110(a)(2)(J) to include a program in the SIP that provides for meeting the applicable consultation requirements of section 121, the public notification requirements of section 127, PSD, and visibility. EPA's rationale for each sub-element is described below.

Consultation with government officials (121 consultation): Section 110(a)(2)(J) of the CAA requires states to provide a process for consultation with local governments, designated organizations and Federal Land Managers carrying out NAAQS implementation requirements pursuant to section 121 relative to consultation. This requirement is met through provisions in separate implementation plans, such as the Regional Haze SIP, which provide for continued consultation with government officials, including the Federal Land Managers (FLMs). Kentucky adopted consultation procedures in coordination with the transportation partners in the Commonwealth, for the implementation of transportation conformity, which includes the development of mobile inventories for SIP development. Required partners covered by Kentucky's consultation procedures include Federal, state and local transportation and air quality agency officials. Implementation of transportation conformity as outlined in the consultation procedures requires KDAQ to consult with Federal, state and local transportation and air quality agency officials on the development of motor vehicle emissions budgets. Also, KDAQ notes in its April 26, 2013, SIP submission that the following Kentucky regulations provide the Commonwealth the authority to meet this requirement: 401 KAR 50:055. *General compliance requirements;* 401 KAR 50:060. *Enforcement;* 401 KAR 50:065. *Conformity of general federal actions;* 401 KAR 50:066. *Conformity of Transportation Plans, Programs, and Projects;* 401 KAR 51:017. *Prevention of Significant Deterioration of Air Quality;* and 401 KAR 51:052. *Review of new sources in or impacting upon nonattainment areas.* EPA has made the preliminary determination that Kentucky's SIP and practices adequately demonstrate consultation with government officials related to the 2010 1-hour SO_2 NAAQS when necessary for the consultation with government officials element of section 110(a)(2)(J).

Public notification (127 public notification): These requirements are met through the following Kentucky regulations: 401 KAR 51:001. *Definitions for 401 KAR Chapter 51;* 401 KAR 51:005. *Purpose and General Provisions;* 401 KAR 51:010. *Attainment Status Designations;* 401 KAR 51:017. *Prevention of significant deterioration of air quality;* 401 KAR 51:052. *Review of new sources in or impacting upon nonattainment areas;* and 401 KAR 52:100. *Public, Affected State, and US. EPA Review.* Additionally, Kentucky provides air quality information to the public via its Web site at: *http://eppcapp.ky.gov/daq/.* EPA has made the preliminary determination that Kentucky's SIP and practices adequately demonstrate the Commonwealth's ability to provide public notification related to the 2010 1-hour SO_2 NAAQS when necessary for the public notification element of section 110(a)(2)(J).

PSD: With regard to the PSD element of section 110(a)(2)(J), this requirement may be met by a state's confirmation in an infrastructure SIP submission that new major sources and major modifications in the state are subject to a PSD program meeting all the current structural requirements of part C of title I of the CAA. As discussed in more detail above under section 110(a)(2)(C), Kentucky's SIP contains the relevant SIP revisions necessary to satisfy the structural PSD requirements of this element of section 110(a)(2)(J). EPA has made the preliminary determination that Kentucky's SIP is adequate for the PSD element of section 110(a)(2)(J).

Visibility protection: EPA's 2013 Guidance notes that it does not treat the visibility protection aspects of section 110(a)(2)(J) as applicable for purposes of the infrastructure SIP approval process. EPA recognizes that states are subject to visibility protection and regional haze program requirements under Part C of the Act (which includes sections 169A and 169B). However, there are no newly applicable visibility protection obligations after the promulgation of a new or revised NAAQS. Thus, EPA has determined that states do not need to address the visibility component of 110(a)(2)(J) in infrastructure SIP submittals. As such, EPA has made the determination that it does not need to address the visibility protection element of section 110(a)(2)(J) in Kentucky's infrastructure SIP submission related to the 2010 1-hour SO_2 NAAQS.

11. 110(a)(2)(K) *Air Quality Modeling and Submission of Modeling Data:* Section 110(a)(2)(K) of the CAA requires that SIPs provide for performing air quality modeling so that effects on air quality of emissions from NAAQS pollutants can be predicted and submission of such data to the EPA can be made. This requirement is met through Kentucky regulations 401 KAR 50:040. *Air Quality Models* and 401 KAR 50:050. *Monitoring.* Additionally, Kentucky participates in a regional effort to coordinate the development of emissions inventories and conduct regional modeling for several NAAQS, including the 2010 1-hour SO_2 NAAQS, for the Southeastern states. Taken as a whole, Kentucky's air quality regulations and practices demonstrate that KDAQ has the authority to provide relevant data for the purpose of predicting the effect on ambient air quality of the 2010 1-hour SO_2 NAAQS. EPA has made the preliminary determination that Kentucky's SIP and practices adequately demonstrate the Commonwealth's ability to provide for air quality modeling, along with analysis of the associated data, related to the 2010 1-hour SO_2 NAAQS. Accordingly, EPA is proposing to approve Kentucky's infrastructure SIP submission with respect to section 110(a)(2)(K).

12. 110(a)(2)(L) *Permitting Fees:* This section requires the SIP to direct the owner or operator of each major stationary source to pay to the permitting authority, as a condition of any permit required under the CAA, a fee sufficient to cover (i) the reasonable costs of reviewing and acting upon any application for such a permit, and (ii) if the owner or operator receives a permit for such source, the reasonable costs of implementing and enforcing the terms and conditions of any such permit (not including any court costs or other costs associated with any enforcement action), until such fee requirement is superseded with respect to such sources by the Administrator's approval of a fee program under title V.

Kentucky regulation, 401 KAR 50:038 *Air Emissions Fee,*[23] provides for the assessment of fees necessary to fund the state permit program. KDAQ ensures this is sufficient for the reasonable cost of reviewing and acting upon PSD and NNSR permits. Additionally, Kentucky has a fully approved title V operating permit program at 401 KAR 52:020 Title V permits[24] that covers the cost of implementation and enforcement of PSD and NNSR permits after they have been issued. EPA has made the preliminary determination that Kentucky's SIP and practices adequately provide for permitting fees related to the 2010 1-hour SO_2 NAAQS, when necessary. Accordingly, EPA is proposing to approve Kentucky's infrastructure SIP submission with respect to section 110(a)(2)(L).

13. 110(a)(2)(M) *Consultation and Participation by Affected Local Entities:* Section 110(a)(2)(M) of the Act requires states to provide for consultation and participation in SIP development by local political subdivisions affected by the SIP. This requirement is met through provisions in separate implementation plans, such as the regional haze SIP, which provide for continued consultation with government officials, including the FLMs. Kentucky regulation, 401 KAR 50:066. *Conformity of transportation plans, programs, and projects,* and the interagency consultation process as directed by Kentucky's approved Conformity SIP and 40 CFR 93.112 provide for consultation with local groups. More specifically, Kentucky adopted state-wide consultation procedures for the implementation of transportation conformity which includes the development of mobile inventories for SIP development and the requirements that link transportation planning and air quality planning in nonattainment and maintenance areas. Required partners covered by Kentucky's consultation procedures include Federal, state and local transportation and air quality agency officials. The state and local transportation agency officials are most directly impacted by transportation conformity requirements and are required to provide public involvement for their activities including the analysis demonstrating how they meet transportation conformity requirements. Further, Kentucky's SO_2 infrastructure

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[23] This rule is not approved into the federally approved SIP.

[24] This rule is not approved into the federally approved SIP.

SIP submission notes that the following State regulations and State statutes provide the Commonwealth the authority to meet the requirements of this element: 401 KAR 50:066. *Conformity of transportation plans, programs, and projects;* 401 KAR 52:100. *Public, Affected State, and US EPA Review;* and KRS Chapter 77. *Air Pollution Control.* EPA has made the preliminary determination that Kentucky's SIP and practices adequately demonstrate consultation with affected local entities related to the 2010 1-hour SO_2 NAAQS when necessary.

V. Proposed Action

With the exception of interstate transport provisions pertaining to the contribution to nonattainment or interference with maintenance in other states and visibility protection requirements of section 110(a)(2)(D)(i)(I) and (II) (prongs 1, 2, and 4) and the minor source program requirements of section 110(a)(2)(C), EPA is proposing to approve Kentucky's April 26, 2013, infrastructure SIP submission for the 2010 1-hour SO_2 NAAQS for the above described infrastructure SIP requirements. EPA is proposing to approve these portions of Kentucky's infrastructure SIP submission for the 2010 1-hour SO_2 NAAQS because these aspects of the submission are consistent with section 110 of the CAA.

VI. Statutory and Executive Order Reviews

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. *See* 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this proposed action merely approves state law as meeting federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this proposed action:

- Is not a significant regulatory action subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
- does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, the SIP is not approved to apply on any Indian reservation land or in any other area where EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), nor will it impose substantial direct costs on tribal governments or preempt tribal law.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Authority: 42 U.S.C. 7401 *et seq.*

Dated: March 25, 2016.

Heather McTeer Toney,

Regional Administrator, Region 4.

[FR Doc. 2016–07644 Filed 4–1–16; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

42 CFR Part 88

[NIOSH Docket 094]

World Trade Center Health Program; Petition 010—Peripheral Neuropathy; Finding of Insufficient Evidence

AGENCY: Centers for Disease Control and Prevention, HHS.

ACTION: Denial of petition for addition of a health condition.

SUMMARY: On January 5, 2016, the Administrator of the World Trade Center (WTC) Health Program received a petition (Petition 010) to add peripheral neuropathy to the List of WTC-Related Health Conditions (List). Upon reviewing the scientific and medical literature, including information provided by the petitioner, the Administrator has determined that the available evidence does not have the potential to provide a basis for a decision on whether to add peripheral neuropathy to the List. The Administrator finds that insufficient evidence exists to request a recommendation of the WTC Health Program Scientific/Technical Advisory Committee (STAC), to publish a proposed rule, or to publish a determination not to publish a proposed rule.

DATES: The Administrator of the WTC Health Program is denying this petition for the addition of a health condition as of April 4, 2016.

FOR FURTHER INFORMATION CONTACT: Rachel Weiss, Program Analyst, 1090 Tusculum Avenue, MS: C–46, Cincinnati, OH 45226; telephone (855) 818–1629 (this is a toll-free number); email *NIOSHregs@cdc.gov.*

SUPPLEMENTARY INFORMATION:

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A. WTC Health Program Statutory Authority
B. Approval to Submit Document to the Office of the Federal Register
C. Petition 010
D. Administrator's Determination on Petition 010

A. WTC Health Program Statutory Authority

Title I of the James Zadroga 9/11 Health and Compensation Act of 2010 (Zadroga Act) Public Law 111–347, as amended by Public Law 114–113, added Title XXXIII to the Public Health Service Act (PHS Act)[1] establishing the WTC Health Program within the Department of Health and Human Services (HHS). The WTC Health Program provides medical monitoring and treatment benefits to eligible firefighters and related personnel, law enforcement officers, and rescue, recovery, and cleanup workers who responded to the September 11, 2001, terrorist attacks in New York City, at the Pentagon, and in Shanksville,

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[1] Title XXXIII of the PHS Act is codified at 42 U.S.C. 300mm to 300mm–61. Those portions of the Zadroga Act found in Titles II and III of Public Law 111–347 do not pertain to the WTC Health Program and are codified elsewhere.

Pennsylvania (responders), and to eligible persons who were present in the dust or dust cloud on September 11, 2001 or who worked, resided, or attended school, childcare, or adult daycare in the New York City disaster area (survivors).

All references to the Administrator of the WTC Health Program (Administrator) in this notice mean the Director of the National Institute for Occupational Safety and Health (NIOSH) or his or her designee.

Pursuant to section 3312(a)(6)(B) of the PHS Act, interested parties may petition the Administrator to add a health condition to the List in 42 CFR 88.1. After receipt of a petition to add a condition to the List, the Administrator must take one of the following four actions described in PHS Act, section 3312(a)(6)(B) and 42 CFR 88.17: (i) Request a recommendation of the STAC; (ii) publish a proposed rule in the **Federal Register** to add such health condition; (iii) publish in the **Federal Register** the Administrator's determination not to publish such a proposed rule and the basis for such determination; or (iv) publish in the **Federal Register** a determination that insufficient evidence exists to take action under (i) through (iii) above.

B. Approval To Submit Document to the Office of the Federal Register

The Secretary, HHS, or her designee, the Director, Centers for Disease Control and Prevention (CDC) and Administrator, Agency for Toxic Substances and Disease Registry (ATSDR), authorized the undersigned, the Administrator of the WTC Health Program, to sign and submit the document to the Office of the Federal Register for publication as an official document of the WTC Health Program. Thomas R. Frieden, M.D., M.P.H., Director, CDC, and Administrator, ATSDR, approved this document on March 24, 2016, for publication.

C. Petition 010

On January 5, 2016, the Administrator received a petition to add "peripheral neuropathy" to the List (Petition 010).[2] The petition was submitted by a Fire Department of New York member who responded to the September 11, 2001, terrorist attacks in New York City. The petitioner indicated that he was diagnosed with peripheral neuropathy shortly after the incident. The petitioner described two studies as the medical basis for his petition: A study of the short-term effects of WTC dust on the sciatic nerve of laboratory rats, and another concerning neuropathic symptoms in WTC responders and survivors. Both studies, as well as an initial literature search conducted by the WTC Health Program, are described below.

D. Administrator's Determination on Petition 010

The Administrator has established a policy for evaluating whether to add non-cancer health conditions to the List of WTC-Related Health Conditions, published online in the Policies and Procedures section of the WTC Health Program Web site.[3] In accordance with the policy, the Administrator directs the WTC Health Program to conduct a review of the scientific literature to determine if the available scientific information has the potential to provide a basis for a decision on whether to add the condition to the List. The literature review includes published, peer-reviewed epidemiologic studies (including direct observational studies in the case of health conditions such as injuries) about the health condition among 9/11-exposed populations. The studies are reviewed for their relevance, quantity, and quality to provide a basis for deciding whether to propose adding the health condition to the List. Where the available evidence has the potential to provide a basis for a decision, the scientific and medical evidence is further assessed to determine whether a causal relationship between 9/11 exposures and the health condition is supported. A health condition may be added to the List if published, peer-reviewed, direct observational or epidemiologic studies, as appropriate, provide substantial support[4] for a causal relationship between 9/11 exposures and the health condition in 9/11-exposed populations. If the evidence assessment provides only modest support[5] for a causal relationship between 9/11 exposures and the health condition, the Administrator may then evaluate additional published, peer-reviewed, epidemiologic studies, conducted among non-9/11-exposed populations, evaluating associations between the health condition of interest and 9/11 agents.[6] If that additional assessment establishes substantial support for a causal relationship between a 9/11 agent or agents and the health condition, the health condition may be added to the List.

In accordance with section 3312(a)(6)(B) of the PHS Act, 42 CFR 88.17, and the policy for the addition of non-cancer health conditions to the List, the Administrator reviewed the evidence presented in Petition 010. The WTC Health Program conducted a systematic literature search of the published scientific and medical literature[7] for evidence of a causal relationship between 9/11 exposures and peripheral neuropathy and reviewed both studies submitted in the petition.

The first study cited by the petitioner, "Analysis of Short-Term Effects of World Trade Center Dust on Rat Sciatic Nerve," by Stecker *et al.*[8] investigated the short-term effects of WTC dust on the sciatic nerve in laboratory rats. This study was not identified in the literature search. Because this study does not meet the policy's requirement that the decision to add a health condition to the List must be based on epidemiologic studies of 9/11-exposed populations, it was not further considered.

The systematic literature search identified only one epidemiologic study regarding peripheral neuropathy in 9/11-exposed populations, which was the second study cited by the petitioner, "Neuropathic Symptoms in World Trade Center Disaster Survivors and Responders," by Wilkenfeld *et al.*[9] Upon review of the study's relevance, quantity, and quality, the paper was found to have numerous limitations, including a small sample size; exclusive use of subjective self-reported outcome and exposure data; lack of information about comparability among the groups;

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[2] *See* Petition 010, WTC Health Program: Petitions Received. *http://www.cdc.gov/wtc/received.html.*

[3] John Howard MD, Administrator of the WTC Health Program, *Policy and Procedures for Adding Non-Cancer Conditions to the List of WTC-Related Health Conditions,* October 21, 2014. *http://www.cdc.gov/wtc/pdfs/WTCHP_PP_Adding_NonCancers_21_Oct_2014.pdf.*

[4] The substantial evidence standard is met when the Program assesses all of the available, relevant information and determines with high confidence that the evidence supports its findings regarding a causal association between the 9/11 exposure(s) and the health condition.

[5] The modest evidence standard is met when the Program assesses all of the available, relevant information and determines with moderate confidence that the evidence supports its findings regarding a causal association between the 9/11 exposure(s) and the health condition.

[6] 9/11 agents are chemical, physical, biological, or other agents or hazards reported in a published, peer-reviewed exposure assessment study of responders or survivors who were present in the New York City disaster area, at the Pentagon site, or at the Shanksville, Pennsylvania site, as those locations are defined in 42 CFR 88.1.

[7] Databases searched include: PubMed, Health & Safety Science Abstracts, Toxicology Abstracts, Toxline, Scopus, Embase, and NIOSHTIC–2.

[8] Mark Stecker, Jacqueline Segelnick, Marc Wilkenfeld, *Analysis of Short-Term Effects of World Trade Center Dust on Rat Sciatic Nerve,* JOEM 56(10):1024–1028, October 2014.

[9] Marc Wilkenfeld, Melissa Fazzari, Jacqueline Segelnick, and Mark Stecker, *Neuropathic Symptoms in World Trade Center Disaster Survivors and Responders,* JOEM 58(1):83–86, January 2016.

lack of objective measurements to confirm the presence of peripheral neuropathy; and absence of control for key confounders other than the comorbidities studied. Each of these limitations affect the strength of the study results, and thus the Wilkenfeld *et al.* study is not sufficient to provide the Administrator with a potential basis for deciding whether to propose adding peripheral neuropathy to the List.

Due to the substantial limitations inherent in the only available study, the Administrator has concluded that the available evidence does not have the potential to provide a basis for a decision on whether to add peripheral neuropathy to the List.

The findings described above led the Administrator to determine that insufficient evidence exists to take further action, including either proposing the addition of peripheral neuropathy to the List (pursuant to PHS Act, sec. 3312(a)(6)(B)(ii) and 42 CFR 88.17(a)(2)(ii)) or publishing a determination not to publish a proposed rule in the **Federal Register** (pursuant to PHS Act, sec. 3312(a)(6)(B)(iii) and 42 CFR 88.17(a)(2)(iii)). The Administrator has also determined that requesting a recommendation from the STAC (pursuant to PHS Act, sec. 3312(a)(6)(B)(i) and 42 CFR 88.17(a)(2)(i)) is unwarranted.

For the reasons discussed above, the request made in Petition 010 to add peripheral neuropathy to the List of WTC-Related Health Conditions is denied.

Dated: March 28, 2016.

John Howard,

Administrator, World Trade Center Health Program and Director, National Institute for Occupational Safety and Health, Centers for Disease Control and Prevention, Department of Health and Human Services.

[FR Doc. 2016–07567 Filed 4–1–16; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Parts 3100, 3160, and 3170

[15X.LLWO300000.L13100000.NB0000]

RIN 1004–AE14

Waste Prevention, Production Subject to Royalties, and Resource Conservation

AGENCY: Bureau of Land Management, Interior.

ACTION: Proposed rule; extension of public comment period.

SUMMARY: On February 8, 2016, the Bureau of Land Management (BLM) published in the **Federal Register** a proposed rule that would reduce waste of natural gas from venting, flaring, and leaks during oil and natural gas production activities on onshore Federal and Indian leases. The proposed rule would also clarify when produced gas lost through venting, flaring, or leaks is subject to royalties, and when oil and gas production used on site would be royalty-free. The proposed rule would replace existing provisions related to venting, flaring, and royalty-free use of gas contained in the 1980 Notice to Lessees and Operators of Onshore Federal and Indian Oil and Gas Leases, Royalty or Compensation for Oil and Gas Lost (NTL–4A), which is over 3 decades old. Today's **Federal Register** Notice extends the public comment period for 14 days beyond the initial comment period deadline.

DATES: The comment period for the proposed rule published on February 8, 2016 (81 FR 6616) is extended. Send your comments on this proposed rule to the BLM on or before April 22, 2016. The BLM need not consider, or include in the administrative record for the final rule, comments that the BLM receives after the close of the comment period or comments delivered to an address other than those listed below (see **ADDRESSES**).

ADDRESSES: *Mail:* U.S. Department of the Interior, Director (630), Bureau of Land Management, Mail Stop 2134 LM, 1849 C St. NW., Washington, DC 20240, Attention: 1004–AE14. *Personal or messenger delivery:* Bureau of Land Management, 20 M Street SE., Room 2134 LM, Attention: Regulatory Affairs, Washington, DC 20003. *Federal eRulemaking Portal: http:// www.regulations.gov.* Follow the instructions at this Web site.

FOR FURTHER INFORMATION CONTACT: Eric Jones at the BLM Moab Field Office, 82 East Dogwood Ave., Moab, UT 84532, or by telephone at 435–259–2117; or Timothy Spisak at the BLM Washington Office, 20 M Street SE., Room 2134LM, Washington, DC 20003, or by telephone at 202–912–7311. For questions relating to regulatory process issues, please contact Faith Bremner, BLM Washington Office, at 202–912–7441. Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 to contact the above individuals during normal business hours. FIRS is available 24 hours a day, 7 days a week to leave a message or question with the above individuals. You will receive a reply during normal business hours.

SUPPLEMENTARY INFORMATION:

Public Comment Procedures

If you wish to comment, you may submit your comments by any one of the methods listed in the **ADDRESSES** section above. Please make your comments as specific as possible by confining them to issues directly related to the content of the proposed rule, and explain the basis for your comments. The comments and recommendations that will be most useful and likely to influence agency decisions are:

1. Those supported by quantitative information or studies; and
2. Those that include citations to, and analyses of, the applicable laws and regulations.

The BLM is not obligated to consider or include in the Administrative Record for the rule comments received after the close of the comment period (see **DATES**) or comments delivered to an address other than those listed above (see **ADDRESSES**).

Comments, including names and street addresses of respondents, will be available for public review at the address listed under **ADDRESSES** during regular hours (7:45 a.m. to 4:15 p.m.), Monday through Friday, except holidays.

Before including your address, telephone number, email address, or other personal identifying information in your comment, be advised that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask in your comment to withhold from public review your personal identifying information, we cannot guarantee that we will be able to do so.

Background

The proposed rule was published on February 8, 2016 (81 FR 6616), with a 60-day comment period closing on April 8, 2016. Since publication, the BLM has received requests to extend the comment period on the proposed rule, as well as requests not to extend the comment period. Commenters requesting an extension cited the technical nature and complexity of the proposed rule; its potential interaction with the BLM's proposals to update and replace oil and gas production measurement rules currently found in Onshore Orders 3, 4, and 5; and the Environmental Protection Agency's proposed rule to establish standards for control of emissions of methane and volatile organic compounds (VOCs) from certain oil and gas production activities, which would be codified as 40 CFR part 60 subpart OOOOa.

Comments opposing an extension cited extensive pre-proposal activities to gather public input; the length of time already provided for public comments; what the commenters characterize as an urgent need to finalize updated rules to address ongoing losses of natural gas and royalty revenues; and the environmental impacts of venting and flaring of methane from oil and gas operations on Federal and Indian lands.

After considering these requests, the BLM has determined that it is appropriate to grant the requests to extend the comment period for a limited time. The BLM is hereby extending the comment period on the proposed rule for 14 days. The closing date of the extended comment period is April 22, 2016.

Janice M. Schneider,

Assistant Secretary, Land and Minerals Management.

[FR Doc. 2016–07646 Filed 4–1–16; 8:45 am]

BILLING CODE 4310–84–P

Notices

Federal Register
Vol. 81, No. 64
Monday, April 4, 2016

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

[Doc. No. AMS–NOP–15–0086; NOP–15–17]

National Organic Standards Board (NOSB): Notice of Intent To Renew Charter and Call for Nominations

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Notice: Intent to renew Charter and call for nominations.

SUMMARY: The National Organic Standards Board (NOSB) was established to assist in the development of standards for substances to be used in organic production and to advise the Secretary on the implementation of the Organic Foods Production Act of 1990 (OFPA). Through this Notice, USDA is announcing the following: its intent to renew the Charter of the NOSB, which expires on May 8, 2016; its call for nominations to fill five (5) upcoming vacancies for appointments in 2017, and its call for nominations for a pool of candidates to fill future unexpected vacancies in any of the position categories should that occur.

DATES: The current NOSB Charter expires on May 8, 2016. Written nominations must be postmarked on or before June 3, 2016.

ADDRESSES: Nomination applications can be sent via email to Michelle Arsenault at *Michelle.Arsenault@ams.usda.gov,* or mailed to: USDA–AMS–NOP, 1400 Independence Avenue SW., Room 2642–S., Ag Stop 0268, Washington, DC 20250–0268. Electronic submittals are preferred.

FOR FURTHER INFORMATION CONTACT: Michelle Arsenault, (202) 720–0081; Email: *Michelle.Arsenault@ams.usda.gov;*

SUPPLEMENTARY INFORMATION: The OFPA of 1990, as amended (7 U.S.C. Section 6501 *et seq.*), requires the Secretary to establish an organic certification program for producers and handlers of agricultural products that have been produced using organic methods. The OFPA includes the requirement that the Secretary establish a NOSB in accordance with the Federal Advisory Committee Act (FACA) (5 U.S.C. App. 2 *et seq.*). The purpose of the NOSB is to assist in the development of a proposed National List of Allowed and Prohibited Substances and to advise the Secretary on the implementation of the OFPA.

Pursuant to the FACA, notice is hereby given that the Secretary of Agriculture intends to renew the NOSB Charter for two years. The NOSB is of a continuing nature due to the changes in organic production and marketing brought about through advancements in science and technology.

The NOSB is composed of 15 members including; four individuals who own or operate an organic farming operation, two individuals who own or operate an organic handling operation; one individual who owns or operates a retail establishment with significant trade in organic products; three individuals with expertise in areas of environmental protection and resource conservation; three individuals who represent public interest or consumer interest groups; one scientist with expertise in the fields of toxicology, ecology, or biochemistry; and one individual who is a certifying agent. Through this Notice, the USDA seeks to fulfill two goals: Firstly, it is seeking nominations to fill five (5) upcoming vacancies for the following positions: One (1) organic producer; one (1) individual with expertise in areas of environmental protection and resource conservation; one (1) representative of a public or consumer interest group; one (1) organic handler or processor; and one (1) scientist (toxicology, ecology or biochemistry). The Secretary of Agriculture will appoint one person to each of these five positions to serve a 5-year term of office beginning January 24, 2017, and ending January 23, 2022. Secondly, the USDA is seeking nominations to fill future unexpected vacancies in any of the position categories. These nominations will be held as a pool of candidates that the Secretary of Agriculture can draw upon as replacement appointees if unexpected vacancies occur. A person appointed to fill a vacancy will serve for the remainder of the 5-year term of the vacant position.

As per the OFPA, individuals seeking appointment to the NOSB must meet the definition of the position that they seek as identified under section 6518 of this title, as well as satisfy the selection criteria for an NOSB member.

Selection criteria include the following: An understanding of organic principles and practical experience in the organic community; demonstrated experience and interest in organic production and organic certification; demonstrated experience with respect to agricultural products produced and handled on certified organic farms; a commitment to the integrity of the organic food and fiber industry; demonstrated experience in the development of public policy such as participation on public or private advisory boards, boards of directors or other comparable organizations; support of consumer and public interest organizations; participation in standards development or involvement in educational outreach activities; the ability to evaluate technical information and to fully participate in Board deliberation and recommendations; the willingness to commit the time and energy necessary to assume Board duties; and other such factors as may be appropriate for specific positions.

To nominate yourself or someone else, please submit the following: a resume (required), Form AD–755 (required), which can be accessed at: *http://www.usda.gov/documents/OCIO_AD_755_Master_2012.pdf,* a cover letter, and a list of endorsements or letters of recommendation (optional). Resumes must be no longer than 5 pages, and should include a summary of the following information: Current and past organization affiliations; areas of expertise; education; career positions held; any other notable positions held.

If USDA receives a request under the Freedom of Information Act (FOIA) (5 U.S.C. 552), for records relating to NOSB nominations, your application materials may be released to the requester. Prior to the release of the information, personally identifiable information protected by the FOIA Privacy Act will be redacted.

Nominations are open to all individuals without regard to race, color, religion, gender, national origin, age, mental or physical disability, marital status, or sexual orientation. To ensure that the recommendations of the NOSB take into account the needs of the diverse groups that are served by the Department, membership on the NOSB shall include, to the extent practicable, individuals with demonstrated ability to represent minorities, women, and persons with disabilities.

The information collection requirements concerning the nomination process have been previously cleared by the Office of Management and Budget (OMB) under OMB Control No. 0505–0001.

Dated: March 30, 2016.

Elanor Starmer,

Administrator, Agricultural Marketing Service.

[FR Doc. 2016–07616 Filed 4–1–16; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Commodity Credit Corporation

Notice of Funds Availability: Inviting Applications for the Foreign Market Development Cooperator Program

Announcement Type: New.

Catalog of Federal Domestic Assistance (CFDA) Number: 10.600.

SUMMARY: The Commodity Credit Corporation (CCC) announces that it is inviting proposals for the 2017 Foreign Market Development Cooperator (Cooperator) program. The intended effect of this notice is to solicit applications from eligible applicants for fiscal year 2017 and to set out criteria for the award of funds under the program in October 2016. The Cooperator program is administered by personnel of the Foreign Agricultural Service (FAS).

DATES: All applications must be received by 5 p.m. Eastern Daylight Time, June 3, 2016. Applications received after this date will not be considered.

FOR FURTHER INFORMATION CONTACT: Entities wishing to apply for funding assistance should contact the Program Operations Division, Office of Trade Programs, Foreign Agricultural Service *by courier:* Room 6512, 1400 Independence Ave. SW., Washington, DC 20250, or *by phone:* (202) 720–4327, or *by fax:* (202) 720–9361, or *by e-mail: uesadmin@fas.usda.gov.* Information is also available on the FAS Web site at the following URL address: *http://www.fas.usda.gov/programs/foreign-market-development-program-fmd.*

SUPPLEMENTARY INFORMATION:

I. Funding Opportunity Description

Authority: The Cooperator program is authorized by Title VII of the Agricultural Trade Act of 1978, as amended. Cooperator program regulations appear at 7 CFR part 1484.

Purpose: The Cooperator program is designed to create, expand, and maintain foreign markets for U.S. agricultural commodities and products through cost–share assistance. Financial assistance under the Cooperator program will be made available on a competitive basis and applications will be reviewed against the evaluation criteria contained herein and in the Cooperator program regulations. All U.S. agricultural commodities, except tobacco, are eligible for consideration.

FAS allocates funds in a manner that effectively supports the strategic decision–making initiatives of the Government Performance and Results Act (GPRA) of 1993. In deciding whether a proposed project will contribute to the effective creation, expansion, or maintenance of foreign markets, FAS considers whether the applicant provides a clear, long–term agricultural trade strategy and a program effectiveness time line against which results can be measured at specific intervals using quantifiable product or country goals. FAS also considers the extent to which a proposed project targets markets with the greatest growth potential. These factors are part of the FAS resource allocation strategy to fund applicants who can demonstrate performance and address the objectives of the GPRA.

II. Award Information

Under the Cooperator program, FAS enters into agreements with eligible nonprofit U.S. trade organizations to share the cost of certain overseas marketing and promotion activities. Funding priority is given to organizations that have the broadest possible producer representation of the commodity being promoted and that are nationwide in membership and scope. Cooperators may receive assistance only for generic activities that do not involve promotions targeted directly to consumers. The program generally operates on a reimbursement basis.

III. Eligibility Information

1. *Eligible Applicants:* To participate in the Cooperator program, an applicant must be a nonprofit U.S. agricultural trade organization.

2. *Cost Sharing:* To participate in the Cooperator program, an applicant must agree to contribute resources to its proposed promotional activities. The Cooperator program is intended to supplement, not supplant, the efforts of the U.S. private sector. The contribution must be at least 50 percent of the value of resources provided by CCC for activities conducted under the project agreement.

The degree of commitment of an applicant to the promotional strategies contained in its application, as represented by the cost–share contributions specified therein, is considered by FAS when determining which applications will be approved for funding. Cost–share may be actual cash invested or in–kind contributions, such as professional staff time spent on design and execution of activities. The Cooperator program regulations, including sections 1484.50 and 1484.51, provide detailed discussion of eligible and ineligible cost–share contributions.

3. *Other:* Applications should include a justification for funding assistance from the program—an explanation as to what specifically could not be accomplished without federal funding assistance and why participating organization(s) are unlikely to carry out the project without such assistance.

IV. Application and Submission Information

1. *Address to Request Application Package:* Organizations are encouraged to submit their Foreign Market Development (FMD) applications to the FAS through the web–based Unified Export Strategy (UES) application. The UES allows applicants to submit a single consolidated and strategically coordinated proposal that incorporates requests for funding for virtually all of the FAS marketing programs, financial assistance programs, and market access programs. The suggested UES format encourages applicants to examine the constraints or barriers to trade faced, identify activities that would help overcome such impediments, consider the entire pool of complementary marketing tools and program resources, and establish realistic export goals.

Applicants planning to use the web–based application must contact FAS' Program Operations Division to obtain site access information. The web–based application may be found at the following URL address: *https://www.fas.usda.gov/ues/webapp/.*

FAS highly recommends applying via the web–based application as this format virtually eliminates paperwork and expedites the FAS processing and review cycle. However, applicants also have the option of submitting an electronic version of their application to FAS at *uesadmin@fas.usda.gov.*

2. Content and Form of Application Submission: To be considered for the Cooperator program, an applicant must submit to FAS information required by section 1484.20 of the Cooperator program regulations. In addition, in accordance with the Office of Management and Budget's policy (68 FR 38402 (June 27, 2003)) regarding the need to identify entities that are receiving government awards, all applicants must submit a Dun and Bradstreet Data Universal Numbering System (DUNS) number. An applicant may request a DUNS number at no cost by calling the dedicated toll–free DUNS number request line at 1–866–705–5711.

In addition, in accordance with 2 CFR part 25, each entity that applies to the Cooperator program and does not qualify for an exemption under 2 CFR 25.110 must:

(i) Provide a valid DUNS number in each application or plan it submits to CCC;

(ii) Be registered in the System for Award Management (SAM) prior to submitting an application or plan; and

(iii) Continue to maintain an active SAM registration with current information at all times during which it has an active Federal award or an application or plan under consideration by CCC.

Similarly, in accordance with 2 CFR part 170, each entity that applies to the Cooperator program and does not qualify for an exception under 2 CFR 170.110(b) must ensure it has the necessary processes and systems in place to comply with the applicable reporting requirements of 2 CFR part 170 should it receive funding under the Cooperator program. Incomplete applications and applications that do not otherwise conform to this announcement or the Cooperator program regulations will not be accepted for review.

FAS administers various other agricultural export assistance programs, including the Market Access Program (MAP), the Emerging Markets Program, the Quality Samples Program, and the Technical Assistance for Specialty Crops program. Any organization that is not interested in applying for the Cooperator program, but would like to request assistance through one of the other programs mentioned, should contact the Program Operations Division.

3. Submission Dates and Times: All applications must be received by 5 p.m. Eastern Daylight Time, June 3, 2016. By the application deadline, all Cooperator program applicants, regardless of the method of submitting an application, must also submit a signed certification statement as specified in 7 CFR 1484.20(a)(14) to the Program Operations Division, Office of Trade Programs, Foreign Agricultural Service, U.S. Department of Agriculture, Room 6512, 1400 Independence Ave. SW., Washington, DC 20250. Applications or certifications received after this date will not be considered.

4. Funding Restrictions: Certain types of expenses are not eligible for reimbursement by the program, and there are limits on other categories of expenses. CCC also will not reimburse unreasonable expenditures or expenditures made prior to approval. Full details are available in sections 1484.54 and 1484.55 of the Cooperator program regulations.

V. Application Review Information

1. Criteria and Review Process: Following is a description of the FAS process for reviewing applications and the criteria for allocating available Cooperator program funds.

(1) Phase 1—Sufficiency Review and FAS Divisional Review

Applications received by the closing date will be reviewed by FAS to determine the eligibility of the applicants and the completeness of the applications. These requirements appear in sections 1484.14 and 1484.20 of the Cooperator program regulations as well as in this Notice. Applications that meet the requirements then will be further evaluated by the appropriate Commodity Branch office of FAS' Cooperator Programs Division. The Commodity Branch will review each application against the criteria listed in section 1484.21 of the Cooperator program regulations. The purpose of this review is to identify meritorious proposals. The Commodity Branch then recommends an appropriate funding level for each application for consideration by the Office of the Deputy Administrator, Office of Trade Programs.

(2) Phase 2—Competitive Review

Meritorious applications are passed on to the Office of the Deputy Administrator, Office of Trade Programs, for the purpose of allocating available funds among those applicants. Applicants will compete for funds on the basis of the following allocation criteria as appropriate (the number in parentheses represents a percentage weight factor):

(a) Contribution Level (40)

- The applicant's 6–year average share (2012–2017) of all contributions under the Cooperator program (contributions may include cash and goods and services provided by U.S. entities in support of foreign market development activities) compared to the applicant's 6–year average share (2012–2017) of the funding level for all Cooperator program participants.

(b) Past Export Performance (20)

- The 6–year average share (2011–2016) of the value of exports promoted by the applicant compared to the applicant's 6–year average share (2011–2016) of the funding level for all Cooperator participants plus, for those groups participating in the MAP program, a 6–year average share (2011–2016) of all MAP budgets.

(c) Past Demand Expansion Performance (20)

- The 6–year average share (2011–2016) of the total value of world trade of the commodities promoted by the applicant compared to the applicant's 6–year average share (2011–2016) of all Cooperator program expenditures plus, for those groups participating in the MAP program, a 6–year average share (2011–2016) of all MAP expenditures.

(d) Future Demand Expansion Goals (10)

- The projected total dollar value of world trade of the commodities being promoted by the applicant for the year 2022 compared to the applicant's requested funding level.

(e) Accuracy of Past Demand Expansion Projections (10)

- The actual dollar value share of world trade of the commodities being promoted by the applicant for the year 2015 compared to the applicant's past projected share of world trade of the commodities being promoted by the applicant for the year 2015, as specified in the applicant's 2012 Cooperator program application.

The Commodity Branches' recommended funding levels for each applicant are converted to percentages of the total Cooperator program funds available and then multiplied by each weight factor to determine the amount of funds allocated to each applicant.

2. Anticipated Announcement Date: Announcements of funding decisions for the Cooperator program are anticipated during October 2016.

VI. Award Administration Information

1. Award Notices: FAS will notify each applicant in writing of the final disposition of its application. FAS will send an approval letter and project agreement to each approved applicant. The approval letter and project agreement will specify the terms and conditions applicable to the project, including the levels of Cooperator program funding and cost–share contribution requirements.

2. Administrative and National Policy Requirements: Interested parties should review the Cooperator program regulations, which are available at the following URL address: *http://www.fas.usda.gov/programs/foreign-market-development-program-fmd.* Hard copies may be obtained by contacting the Program Operations Division.

3. Reporting: FAS requires various reports and evaluations from Cooperators. Reporting requirements are detailed in the Cooperator program regulations in sections 1484.53, 1484.70, and 1484.72.

VII. Agency Contact(s)

For additional information and assistance, contact the Program Operations Division, Office of Trade Programs, Foreign Agricultural Service, U.S. Department of Agriculture *by courier:* Room 6512, 1400 Independence Ave. SW., Washington, DC 20250, or *by phone:* (202) 720–4327, or *by fax:* (202) 720–9361, or *by e-mail: uesadmin@fas.usda.gov.*

Signed at Washington, DC on the 25th of March, 2016.

Bryce Quick,

Acting Administrator, Foreign Agricultural Service, and Vice President, Commodity Credit Corporation.

[FR Doc. 2016–07637 Filed 4–1–16; 8:45 am]

BILLING CODE 3410–10–P

DEPARTMENT OF AGRICULTURE

Commodity Credit Corporation

Notice of Funds Availability: Inviting Applications for the Market Access Program

Announcement Type: New.

Catalog of Federal Domestic Assistance (CFDA) Number: 10.601.

SUMMARY: The Commodity Credit Corporation (CCC) announces that it is inviting proposals for the 2017 Market Access Program (MAP). The intended effect of this notice is to solicit applications from eligible applicants for fiscal year 2017 and to set out criteria for the award of funds under the program in October 2016. The MAP is administered by personnel of the Foreign Agricultural Service (FAS).

DATES: All applications must be received by 5 p.m. Eastern Daylight Time, June 3, 2016. Applications received after this date will not be considered.

FOR FURTHER INFORMATION CONTACT: Entities wishing to apply for funding assistance should contact the Program Operations Division, Office of Trade Programs, Foreign Agricultural Service *by courier:* Room 6512, 1400 Independence Ave. SW., Washington, DC 20250, or *by phone:* (202) 720–4327, or *by fax:* (202) 720–9361, or *by email: uesadmin@fas.usda.gov.* Information is also available on the FAS Web site at the following URL address: *http://www.fas.usda.gov/programs/market-access-program-map.*

SUPPLEMENTARY INFORMATION:

I. Funding Opportunity Description

Authority: The MAP is authorized under Section 203 of the Agricultural Trade Act of 1978, as amended. MAP regulations appear at 7 CFR part 1485.

Purpose: The MAP is designed to create, expand, and maintain foreign markets for U.S. agricultural commodities and products through cost-share assistance. Financial assistance under the MAP will be made available on a competitive basis, and applications will be reviewed against the evaluation criteria contained herein and in the MAP regulations. All U.S. agricultural commodities, except tobacco, are eligible for consideration.

FAS allocates funds in a manner that effectively supports the strategic decision-making initiatives of the Government Performance and Results Act (GPRA) of 1993. In deciding whether a proposed project will contribute to the effective creation, expansion, or maintenance of foreign markets, FAS considers whether the applicant provides a clear, long-term agricultural trade strategy and a program effectiveness time line against which results can be measured at specific intervals using quantifiable product or country goals. FAS also considers the extent to which a proposed project targets markets with the greatest growth potential. These factors are part of the FAS resource allocation strategy to fund applicants who can demonstrate performance and address the objectives of the GPRA.

II. Award Information

Under the MAP, the CCC enters into agreements with eligible Participants to share the cost of certain overseas marketing and promotion activities. MAP Participants may receive assistance for generic or brand promotion activities. For generic activities, funding priority is given to organizations that have the broadest possible producer representation of the commodity being promoted and that are nationwide in membership and scope. For branded activities, only nonprofit U.S. agricultural trade organizations, nonprofit state regional trade groups (SRTGs), U.S. agricultural cooperatives, and state government agencies can participate directly in the brand program. The MAP generally operates on a reimbursement basis.

III. Eligibility Information

1. Eligible Applicants: To participate in the MAP, an applicant must be a nonprofit U.S. agricultural trade organization, a nonprofit state regional trade group, a U.S. agricultural cooperative, or a state government agency. A small-sized U.S. commercial entity may participate through a MAP Participant.

2. Cost Sharing: To participate in the MAP, an applicant must agree to contribute resources to its proposed promotional activities. The MAP is intended to supplement, not supplant, the efforts of the U.S. private sector. In the case of generic promotion, the contribution must be at least 10 percent of the value of resources provided by CCC for such generic promotion. In the case of brand promotion, the contribution must be at least 50 percent of the total cost of such brand promotion.

The degree of commitment of an applicant to the promotional strategies contained in its application, as represented by the cost-share contributions specified therein, is considered by FAS when determining which applications will be approved for funding. Cost-share may be actual cash invested or in-kind contributions, such as professional staff time spent on design and execution of activities. The MAP regulations, in section 1485.16, provide a detailed discussion of eligible and ineligible cost-share contributions.

3. Other: Applications should include a justification for funding assistance from the program—an explanation as to what specifically could not be accomplished without federal funding assistance and why participating organization(s) are unlikely to carry out the project without such assistance.

IV. Application and Submission Information

1. Address To Request Application Package: Organizations are encouraged to submit their MAP applications to FAS through the web-based Unified Export Strategy (UES) application. The UES allows interested applicants to submit a single consolidated and strategically coordinated proposal that incorporates requests for funding for virtually all of the FAS marketing programs, financial assistance programs, and market access programs. The suggested UES format encourages applicants to examine the constraints or barriers to trade that they face, identify activities that would help overcome such impediments, consider the entire pool of complementary marketing tools and program resources, and establish realistic export goals. Applicants planning to use the web-based system must contact FAS' Program Operations Division to obtain site access information. The web-based application may be found at the following URL address: *https://www.fas.usda.gov/ues/webapp/.*

FAS highly recommends applying via the web-based application, as this format virtually eliminates paperwork and expedites the FAS processing and review cycle. However, applicants also have the option of submitting an electronic version of their application to FAS at *uesadmin@fas.usda.gov.*

2. Content and Form of Application Submission: To be considered for the MAP, an applicant must submit to FAS information required by section 1485.13 of the MAP regulations. In addition, in accordance with the Office of Management and Budget's policy (68 FR 38402 (June 27, 2003)) regarding the need to identify entities that are receiving government awards, all applicants must submit a Dun and Bradstreet Data Universal Numbering System (DUNS) number. An applicant may request a DUNS number at no cost by calling the dedicated toll-free DUNS number request line at (866) 705–5711.

In addition, in accordance with 2 CFR part 25, each entity that applies to the MAP and does not qualify for an exemption under 2 CFR 25.110 must:

(i) Provide a valid DUNS number in each application or plan it submits to CCC;

(ii) Be registered in the System for Award Management (SAM) prior to submitting an application or plan; and

(iii) Continue to maintain an active SAM registration with current information at all times during which it has an active Federal award or an application or plan under consideration by CCC.

Similarly, in accordance with 2 CFR part 170, each entity that applies to MAP and does not qualify for an exception under 2 CFR 170.110(b) must ensure it has the necessary processes and systems in place to comply with the applicable reporting requirements of 2 CFR part 170 should it receive MAP funding.

Incomplete applications and applications that do not otherwise conform to this announcement and the MAP regulations will not be accepted for review.

FAS administers various other agricultural export assistance programs including the Foreign Market Development Cooperator (Cooperator) program, the Emerging Markets Program, the Quality Samples Program, and the Technical Assistance for Specialty Crops program. Any organization that is not interested in applying for the MAP, but would like to request assistance through one of the other programs mentioned, should contact the Program Operations Division.

3. Submission Dates and Times: All applications must be received by 5 p.m. Eastern Daylight Time, June 3, 2016. By the application deadline, all MAP applicants, regardless of the method of submitting an application, must also submit a signed certification statement as specified in 7 CFR 1485.13(a)(2)(i)(E) to the Program Operations Division, Office of Trade Programs, Foreign Agricultural Service, U.S. Department of Agriculture, Room 6512, 1400 Independence Ave. SW., Washington, DC 20250. Applications or certifications received after this date will not be considered.

4. Funding Restrictions: Certain types of expenses are not eligible for reimbursement by the program, and there are limits on other categories of expenses. CCC also will not reimburse unreasonable expenditures or expenditures made prior to approval. Full details are available in the MAP regulations in section 1485.17.

V. Application Review Information

1. Criteria and Review Process: Following is a description of the FAS process for reviewing applications and the criteria for allocating available MAP funds.

(1) Phase 1—Sufficiency Review and FAS Divisional Review:

Applications received by the closing date will be reviewed by FAS to determine the eligibility of the applicants and the completeness of the applications. These requirements appear in sections 1485.12 and 1485.13 of the MAP regulations. Applications that meet the requirements then will be further evaluated by the appropriate Commodity Branch office of FAS' Cooperator Programs Division. The Commodity Branch will review each application against the criteria listed in section 1485.14(b) and (c) of the MAP regulations as well as in this Notice. The purpose of this review is to identify meritorious proposals and to recommend an appropriate funding level for each application based upon these criteria.

(2) Phase 2—Competitive Review:

Meritorious applications then will be passed on to the Office of the Deputy Administrator, Office of Trade Programs, for the purpose of allocating available funds among the applicants. Applicants will compete for funds on the basis of the following allocation criteria as applicable (the number in parentheses represents a percentage weight factor):

(a) Applicant's Contribution Level (40)

- The applicant's 4-year average share (2014–2017) of all contributions under the MAP (cash and goods and services provided by U.S. entities in support of overseas marketing and promotion activities) compared to the applicant's 4-year average share (2014–2017) of the funding level for all MAP Participants.

(b) Past Performance (30)

- The 3-year average share (2013–2015) of the value of exports promoted by the applicant compared to the applicant's 2-year average share (2015–2016) of the funding level for all MAP Participants plus, for those groups participating in the Cooperator program, the 2-year average share (2015–2016) of all Cooperator program budgets.

(c) Projected Export Goals (15)

- The total dollar value of projected exports promoted by the applicant for 2017 compared to the applicant's requested funding level.

(d) Accuracy of Past Projections (15)

- Actual exports for 2015 as reported in the 2017 MAP application compared to past projections of exports for 2015 as specified in the 2015 MAP application.

The Commodity Branches' recommended funding levels for each applicant are converted to percentages of the total MAP funds available and then multiplied by each weight factor as described above to determine the amount of funds allocated to each applicant.

2. Anticipated Announcement Date: Announcements of funding decisions for the MAP are anticipated during October 2016.

VI. Award Administration Information

1. Award Notices: FAS will notify each applicant in writing of the final disposition of its application. The FAS will send an approval letter and program agreement to each approved applicant. The approval letter and program agreement will specify the terms and conditions applicable to the project, including the levels of MAP funding and cost-share contribution requirements.

2. Administrative and National Policy Requirements: Interested parties should review the MAP regulations, which are available at the following URL address: *http://www.fas.usda.gov/programs/market-access-program-map.* Hard copies may be obtained by contacting the Program Operations Division.

3. Reporting: FAS requires various reports and evaluations from MAP Participants. Reporting requirements are detailed in sections 1485.22 and 1485.23 of the MAP regulations.

VII. Agency Contact(s)

For additional information and assistance, contact the Program Operations Division, Office of Trade Programs, Foreign Agricultural Service, U.S. Department of Agriculture *by courier:* Room 6512, 1400 Independence Ave. SW., Washington, DC 20250, or *by phone:* (202) 720–4327, or *by fax:* (202) 720–9361, or *by email: uesadmin@fas.usda.gov.*

Signed at Washington, DC, on the 25th of March, 2016.

Bryce Quick,

Acting Administrator, Foreign Agricultural Service, and Vice President, Commodity Credit Corporation.

[FR Doc. 2016–07636 Filed 4–1–16; 8:45 am]

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DEPARTMENT OF AGRICULTURE

Commodity Credit Corporation

Notice of Funds Availability: Inviting Applications for the Emerging Markets Program

SUMMARY: The Commodity Credit Corporation (CCC) announces that it is inviting proposals for the 2017 Emerging Markets Program (EMP). The intended effect of this notice is to solicit applications from the private sector and from government agencies for fiscal year 2017 and to set out criteria for the award of funds under the program in October 2016. The EMP is administered by personnel of the Foreign Agricultural Service (FAS).

DATES: To be considered for funding, applications must be received by 5 p.m. Eastern Daylight Time, June 3, 2016. Any applications received after this time will be considered only if funds are still available.

FOR FURTHER INFORMATION CONTACT: Entities wishing to apply for funding assistance should contact the Program Operations Division, Office of Trade Programs, Foreign Agricultural Service *by courier:* Room 6512, 1400 Independence Ave. SW., Washington, DC 20250, or *by phone:* (202) 720–4327, or *by fax:* (202) 720–9361, or *by email: podadmin@fas.usda.gov.* Information is also available on the Foreign Agricultural Service Web site at *http://www.fas.usda.gov/programs/emerging-markets-program-emp.*

SUPPLEMENTARY INFORMATION:

A. Funding Opportunity Description

Announcement Type: New.

Catalog of Federal Domestic Assistance (CFDA) Number: 10.603.

Authority: The EMP is authorized by section 1542(d)(1) of the Food, Agriculture, Conservation and Trade Act of 1990 (The Act), as amended. The EMP regulations appear at 7 CFR part 1486.

1. Purpose. The EMP assists U.S. entities in developing, maintaining, or expanding exports of U.S. agricultural commodities and products by funding activities that improve emerging markets' food and rural business systems, including reducing potential trade barriers in such markets. The EMP is intended primarily to support export market development efforts of the private sector, but EMP resources may also be used to assist public organizations.

All U.S. agricultural commodities, except tobacco, are eligible for consideration. Agricultural product(s) should be comprised of at least 50 percent U.S. origin content by weight, exclusive of added water, to be eligible for funding. Proposals that seek support for multiple commodities are also eligible. EMP funding may only be used to develop, maintain, or expand emerging markets for U.S. agricultural commodities and products through generic activities. EMP funding may not be used to support the export of another country's products to the United States, or to promote the development of a foreign economy as a primary objective.

2. Appropriate Activities. All EMP projects must fall into at least one of the following four categories:

(a) Assistance to teams consisting primarily of U.S. individuals expert in assessing the food and rural business systems of other countries. This type of EMP project must include all three of the following:

- Conduct an assessment of the food and rural business system needs of an emerging market;
- Make recommendations on measures necessary to enhance the effectiveness of these systems; and
- Identify opportunities and projects to enhance the effectiveness of the emerging market's food and rural business systems.

To be eligible, such proposals must clearly demonstrate that experts are primarily agricultural consultants, farmers, and other persons from the private sector and government officials, and that they have expertise in assessing the food and rural business systems of other countries.

(b) Assistance to enable individuals from emerging markets to travel to the United States so that these individuals can, for the purpose of enhancing the food and rural business systems in their countries, become familiar with U.S. technology and agribusiness and rural enterprise operations by consulting with food and rural business system experts in the United States.

(c) Assistance to enable U.S. agricultural producers and other individuals knowledgeable in agricultural and agribusiness matters to travel to emerging markets to assist in transferring their knowledge and expertise to entities in emerging markets. Such travel must be to emerging markets. Travel to developed markets is not eligible under the program even if the traveler's targeted market is an emerging market.

(d) Technical assistance to implement the recommendations, projects, and/or opportunities identified under 2(a) above. Technical assistance that does not implement the recommendations, projects, and/or opportunities identified by assistance under 2(a) above is not eligible under the EMP.

Proposals that do not fall into one or more of the four categories above, regardless of previous guidance provided regarding the EMP, are not eligible for consideration under the program.

EMP funds may not be used to support normal operating costs of individual organizations, nor as a source to recover pre-award costs or prior expenses from previous or ongoing projects. Proposals that counter national strategies or duplicate activities planned or already underway by U.S. non-profit agricultural commodity or trade associations ("cooperators") will not be considered. Other ineligible expenditures include: branded product promotions (*e.g.,* in-store, restaurant advertising, labeling, etc.); advertising; administrative and operational expenses for trade shows; Web site development; equipment purchases; and the preparation and printing of brochures, flyers, and posters (except in connection with specific technical assistance activities such as training seminars). For a more complete description of ineligible expenditures, please refer to the EMP regulations.

3. Eligible Markets. The Act defines an emerging market as any country that the Secretary of Agriculture determines:

(a) Is taking steps toward developing a market-oriented economy through the food, agriculture, or rural business sectors of the economy of the country; and

(b) Has the potential to provide a viable and significant market for U.S. agricultural commodities or products of U.S. agricultural commodities.

Because EMP funds are limited and the range of potential emerging market countries is worldwide, consideration will be given only to proposals that target countries or regional groups with per capita income of less than $12,736 (the current ceiling on upper middle income economies as determined by the World Bank [World Development Indicators; July 2015, *http://siteresources.worldbank.org/DATASTATISTICS/Resources/CLASS.XLS*]) and populations of greater than 1 million.

Income limits and their calculation can change from year to year with the result that a given country may qualify under the legislative and administrative criteria one year, but not the next. Therefore, CCC has not established a fixed list of emerging market countries.

A few countries technically qualify as emerging markets but may require a separate determination before funding can be considered because of political sensitivities.

B. Award Information

In general, all qualified proposals received before the application deadline will compete for EMP funding. The applicant's willingness to contribute resources, including cash, goods, and services, will be a critical factor in determining which proposals are funded under the EMP. Each proposal will also be judged on the potential benefits to the industry represented by the applicant and the degree to which the proposal demonstrates industry support.

The limited funds and the range of eligible emerging markets worldwide generally preclude CCC from approving large budgets for individual projects. While there is no minimum or maximum amount set for EMP-funded projects, most projects are funded at a level of less than $500,000 and for a duration of approximately one year. Private entities may submit multi-year proposals requesting higher levels of funding that may be considered in the context of a detailed strategic implementation plan. Funding in such cases is generally limited to three years and provided one year at a time with commitments beyond the first year subject to interim evaluations and funding availability. Proposals from government entities are not eligible for multi-year funding.

Funding for successful proposals will be provided through specific agreements. The CCC, through FAS, will be kept informed of the implementation of approved projects through the requirement to provide interim progress reports and final performance reports. Changes in the original project timelines and adjustments within project budgets must be approved in advance by FAS.

Note: EMP funds awarded to government agencies must be expended or otherwise obligated by close of business, September 30, 2017.

C. Eligibility and Qualification Information

1. Eligible Applicants: Any U.S. private or government entity (*e.g.,* universities, trade associations, agricultural cooperatives, state regional trade groups (SRTGs), state departments of agriculture, federal agencies, for-profit entities, and consulting businesses) with a demonstrated role or interest in exports of U.S. agricultural commodities or products may apply to the program. Proposals from research and consulting organizations will be considered if they provide evidence of substantial participation by and financial support from the U.S. industry. For-profit entities may not use program funds to conduct private business, promote private self-interests, supplement the costs of normal sales activities, or promote their own products or services beyond specific uses approved by CCC in a given project. Foreign organizations, whether government or private, may participate as third parties in activities carried out by U.S. organizations but are not eligible for direct funding assistance from the program.

U.S. export market development cooperators and SRTGs may seek funding to address priority, market specific issues and to undertake technical assistance activities supported by an approved EMP assessment.

2. Cost Sharing: No private sector proposal will be considered without the element of cost-share from the applicant and/or U.S. partners. The EMP is intended to complement, not supplant, the efforts of the U.S. private sector. There is no minimum or maximum amount of cost-share, though the degree of commitment to a proposed project, represented by the amount and type of private funding, is one factor used in determining which proposals will be approved for funding. Cost-share may be actual cash invested or professional time of staff assigned to the project. Proposals for which private industry is willing to commit cash, rather than in-kind contributions, such as staff resources, will be given priority consideration.

Cost-sharing is not required for proposals from government agencies, but is mandatory for all other eligible entities, even when they may be party to a joint proposal with a government agency. Contributions from USDA or other government agencies or programs may not be counted toward the stated cost-share requirement of other applicants. Similarly, contributions from foreign (non-U.S.) organizations may not be counted toward the cost-share requirement, but may be counted in the total cost of the project.

3. Other: Proposals should include a justification for funding assistance from the program—an explanation as to what specifically could not be accomplished without Federal funding assistance and why the participating organization(s) would be unlikely to carry out the project without such assistance. Applicants may submit more than one proposal.

D. Application and Submission Information

1. Address To Request Application Package: EMP applicants have the opportunity to utilize the Unified Export Strategy (UES) application process, an online system that provides a means for interested applicants to submit a consolidated and strategically coordinated single proposal that incorporates funding requests for any or all of the market development programs administered by FAS.

Applicants are strongly encouraged to submit their applications to FAS through the web-based UES application. The Internet-based format reduces paperwork and expedites FAS' processing and review cycle. Applicants planning to use the on-line UES system must contact the Program Operations Division to obtain site access information. The Internet-based application is located at the following URL address: *https://www.fas.usda.gov/ues/webapp/.*

Although FAS highly recommends applying via the UES, applicants also have the option of submitting an electronic application to FAS at *podadmin@fas.usda.gov.*

2. Content and Form of Application Submission: To be considered for the EMP, an applicant must submit to FAS information required by this Notice of Funds Availability and the EMP regulations at 7 CFR part 1486. EMP regulations and additional information are available at the following URL address: *http://www.fas.usda.gov/programs/emerging-markets-program-emp.*

In addition, in accordance with the Office of Management and Budget's issuance of a final policy (68 FR 38402 (June 27, 2003)) regarding the need to identify entities that are receiving government awards, all applicants must submit a Dun and Bradstreet Data Universal Numbering System (DUNS) number. An applicant may request a DUNS number at no cost by calling the dedicated toll-free DUNS number request line at (866) 705–5711.

In addition, in accordance with 2 CFR part 25, each entity that applies to the EMP and does not qualify for an exemption under 2 CFR 25.110 must:

(i) Provide a valid DUNS number in each application or plan it submits to CCC;

(ii) Be registered in the System for Award Management (SAM) prior to submitting an application or plan; and

(iii) Continue to maintain an active SAM registration with current information at all times during which it has an active Federal award or an application or plan under consideration by CCC.

Similarly, in accordance with 2 CFR part 170, each entity that applies to the EMP and does not qualify for an exception under 2 CFR 170.110(b) must ensure it has the necessary processes and systems in place to comply with the applicable reporting requirements of 2 CFR part 170 should it receive EMP funding.

Applications should be no longer than ten (10) pages and include the following information:

(a) Date of proposal;

(b) Name of organization submitting proposal;

(c) Organization address, telephone, and fax;

(d) Tax ID number;

(e) DUNS number;

(f) Primary contact person;

(g) Full title of proposal;

(h) Target market(s);

(i) Specific description of activity/activities to be undertaken;

(j) Clear demonstration that successful implementation will benefit an emerging market's food and rural business system and/or reduce potential trade barriers, and will benefit a particular industry as a whole, not just the applicant(s);

(k) Current conditions in the target market(s) affecting the intended commodity or product;

(l) Description of the need to assess the food and rural business systems of the emerging market, or of the recommendations, projects, and/or opportunities previously identified by an approved EMP assessment that are to be addressed by the project;

(m) Project objectives;

(n) Performance measures: Benchmarks for quantifying progress in meeting the objectives;

(o) Rationale: Explanation of the underlying reasons for the project proposal and its approach, the anticipated benefits, and any additional pertinent analysis;

(p) Explanation as to what specifically could not be accomplished without Federal funding assistance and why the participating organization(s) would be unlikely to carry out the project without such assistance;

(q) Timeline(s) for implementation of activity, including start and end dates;

(r) Information on whether similar activities are or have previously been funded with USDA resources in the target country or countries (*e.g.,* under the MAP and/or Cooperator programs);

(s) Detailed line item activity budgets:

- Cost items should be allocated separately to each participating organization;
- Individual expense items constituting a proposed activity's overall budget (*e.g.,* salaries, travel expenses, consultant fees, administrative costs, etc.) should be listed on separate line items, each clearly indicating:

(1) Which items are to be covered by EMP funding;

(2) Which are to be covered by the participating U.S. organization(s); and

(3) Which are to be covered by foreign third parties (if applicable);

- Cost line items for consultant fees should show the calculation of the daily rate and the number of days;
- Cost line items for travel expenses should show the number of trips and the destination, cost, and objective for each trip; and

(t) Qualifications of applicant(s) should be included as an attachment.

3. *Funding Restrictions:* Certain types of expenses are not eligible for reimbursement by the program, and there are limits on other categories of expenses, such as indirect overhead charges, travel expenses, and consulting fees. CCC will also not reimburse unreasonable expenditures or expenditures made prior to approval of a proposal. Full details of the funding restrictions are available in the EMP regulations.

4. *Submission Dates and Times:* EMP proposals are reviewed on a rolling basis during the fiscal year as long as EMP funding is available as set forth below:

- Proposals received by 5 p.m. Eastern Daylight Time, June 3, 2016, will be considered for funding with other proposals received by that date;
- Proposals not approved for funding during the review period will be reconsidered for funding after the review period only if the applicant specifically requests such reconsideration in writing, and only if funding remains available;
- Proposals received after 5 p.m. Eastern Daylight Time, June 3, 2016, will be considered in the order received for funding only if funding remains available.

5. *Other Submission Requirements:* All Internet-based applications must be properly submitted by 5 p.m., Eastern Daylight Time, June 3, 2016, in order to be considered for funding; late submissions received after the deadline will be considered only if funding remains available. All applications submitted by email must be received by 5 p.m. Eastern Daylight Time, June 3, 2016, at *podadmin@fas.usda.gov* in order to receive the same consideration.

E. Application Review Information

1. *Criteria:* Key criteria used in judging proposals include:

Evaluation criteria. FAS will consider a number of factors when reviewing proposals, including:

- Appropriateness of the Activity, including the ability of the applicant to provide an experienced U.S.-based staff with knowledge and expertise to ensure adequate development, supervision, and execution of the proposed project; the entity's willingness to contribute resources, including cash and goods and services of the U.S. industry, with greater weight given to cash contributions (for private sector proposals only); and the conditions or constraints affecting the level of U.S. exports and market share for the agricultural commodity/product (30%);
- Market Impact, including the degree to which the proposed project is likely to contribute to the development, maintenance, or expansion of U.S. agricultural exports to emerging markets; demonstration of how a proposed project will benefit a particular industry as a whole; and the quality of the project's proposed performance measures (50%); and
- Completeness and Viability of the proposal along with past program results and evaluations, if applicable (20%).

Please see 7 CFR part 1486 for additional evaluation criteria.

2. Review and Selection Process: All applications undergo a multi-phase review within FAS, by appropriate FAS field offices, and, as needed, by the private sector Advisory Committee on Emerging Markets to determine the qualifications, quality, and appropriateness of projects and the reasonableness of project budgets.

F. Federal Award Administration Information

1. Award Notices: FAS will notify each applicant in writing of the final disposition of the submitted application. FAS will send an approval letter and project agreement to each approved applicant. The approval letter and agreement will specify the terms and conditions applicable to the project, including the levels of EMP funding and cost-share contribution requirements.

2. Administrative and National Policy Requirements: Interested parties should review the EMP regulations, which are available at the following URL address: *http://www.fas.usda.gov/programs/emerging-markets-program-emp.*

3. Reporting. Quarterly progress reports for all programs one year or longer in duration are required. Projects of less than one year generally require a mid-term progress report. Final performance reports are due 90 days after completion of each project. Content requirements for both types of reports are contained in the Project Agreement. Final financial reports are also due 90 days after completion of each project as attachments to the final reports. Please see 7 CFR part 1486 for additional reporting requirements.

G. Federal Awarding Agency Contact(s)

For additional information and assistance, contact the Program Operations Division, Office of Trade Programs, Foreign Agricultural Service, U.S. Department of Agriculture *by courier:* Room 6512, 1400 Independence Ave. SW., Washington, DC 20250, or *by phone:* (202) 720–4327, or *by fax:* (202) 720–9361, or *by email: podadmin@fas.usda.gov.*

Signed at Washington, DC, on 25th day of March, 2016.

Bryce Quick,

Acting Administrator, Foreign Agricultural Service and Vice President, Commodity Credit Corporation.

[FR Doc. 2016–07638 Filed 4–1–16; 8:45 am]

BILLING CODE 3410–10–P

DEPARTMENT OF AGRICULTURE

Commodity Credit Corporation

Notice of Funds Availability: Inviting Applications for the Technical Assistance for Specialty Crops Program

Announcement Type: New.

Catalog of Federal Domestic Assistance (CFDA) Number: 10.604.

SUMMARY: The Commodity Credit Corporation (CCC) announces that it is inviting proposals for the 2017 Technical Assistance for Specialty Crops (TASC) program. The intended effect of this notice is to solicit applications from the private sector and from government agencies for fiscal year 2017 and to set out criteria for the award of funds in October 2016. The TASC program is administered by personnel of the Foreign Agricultural Service (FAS).

DATES: To be considered for funding, applications must be received by 5 p.m. Eastern Daylight Time, June 3, 2016. Any applications received after this time will be considered only if funds are still available.

FOR FURTHER INFORMATION CONTACT: Entities wishing to apply for funding assistance should contact the Program Operations Division, Office of Trade Programs, Foreign Agricultural Service *by courier:* Room 6512, 1400 Independence Ave. SW., Washington, DC 20250, or *by phone:* (202) 720–4327, or *by fax:* (202) 720–9361, or *by email: podadmin@fas.usda.gov.* Information is also available on the FAS Web site at *http://www.fas.usda.gov/programs/technical-assistance-specialty-crops-tasc.*

SUPPLEMENTARY INFORMATION:

A. Funding Opportunity Description

Authority: The TASC program is authorized by section 3205 of Pub. L. 107–171. TASC regulations appear at 7 CFR part 1487.

Purpose: The TASC program is designed to assist U.S. organizations by providing funding for projects that address sanitary, phytosanitary, or technical barriers that prohibit or threaten the export of U.S. specialty crops. U.S. specialty crops, for the purpose of the TASC program, are defined to include all cultivated plants, or the products thereof, produced in the United States except wheat, feed grains, oilseeds, cotton, rice, peanuts, sugar, and tobacco.

Prior to the enactment of the Agricultural Act of 2014 (Act) on February 7, 2014, the TASC program was not available to address technical barriers to trade except for those that were related to sanitary or phytosanitary issues. The Act amended the statute authorizing the TASC program to allow the program to be used to address technical barriers to trade regardless of whether the barriers are related to a sanitary or phytosanitary barrier. The TASC regulations have been amended to reflect the recent statutory change.

As a general matter, TASC program projects should be designed to address the following criteria:

- Projects should identify and address a sanitary, phytosanitary, or technical barrier that prohibits or threatens the export of U.S. specialty crops;
- Projects should demonstrably benefit the represented industry rather than a specific company or brand;
- Projects must address barriers to exports of commercially-available U.S. specialty crops for which barrier removal would predominantly benefit U.S. exports; and
- Projects should include an explanation as to what specifically could not be accomplished without Federal funding assistance and why the participating organization(s) would be unlikely to carry out the project without such assistance.

Examples of expenses that CCC may agree to reimburse under the TASC program include, but are not limited to: Initial pre-clearance programs, export protocol and work plan support, seminars and workshops, study tours, field surveys, development of pest lists, pest and disease research, reasonable logistical and administrative support, and travel and per diem expenses.

B. Award Information

In general, all qualified proposals received before the specified application deadline will compete for funding. The limited funds and the range of barriers affecting the exports of U.S. specialty crops worldwide preclude CCC from approving large budgets for individual projects. Proposals requesting more than $500,000 in any given year will not be considered. Additionally, private entities may submit multi-year proposals that may be considered in the context of a detailed strategic implementation plan. The maximum duration of an activity is five years. Funding in such cases may, at FAS' discretion, be provided one year at a time with commitments beyond the first year subject to interim evaluations and funding availability. In order to validate funding eligibility, proposals must specify previous years of TASC funding for each proposed activity/title/market/constraint combination. Government entities are not eligible for multi-year funding.

Applicants may submit multiple proposals, and applicants with previously approved TASC proposals may apply for additional funding. The number of approved projects that a TASC participant can have underway at any given time is five. Please see 7 CFR part 1487 for additional restrictions.

FAS will consider providing either grant funds as direct assistance to U.S. organizations or technical assistance on behalf of U.S. organizations, provided that the organization submits timely and qualified proposals. FAS will review all proposals against the evaluation criteria contained in the program regulations.

Funding for successful proposals will be provided through specific agreements. These agreements will incorporate the proposal as approved by FAS. FAS must approve in advance any subsequent changes to the project. FAS or another Federal agency may be involved in the implementation of approved projects.

C. Eligibility Information

1. Eligible Applicants: Any U.S. organization, private or government, with a demonstrated role or interest in exporting U.S. agricultural commodities may apply to the program. Government organizations consist of Federal, State, and local agencies. Private organizations include non-profit trade associations, universities, agricultural cooperatives, state regional trade groups, and private companies.

Foreign organizations, whether government or private, may participate as third parties in activities carried out by U.S. organizations, but are not eligible for direct funding assistance from the program.

2. Cost Sharing or Matching: FAS considers the applicant's willingness to contribute resources, including cash, goods, and services of the U.S. industry and foreign third parties, when determining which proposals are approved for funding.

3. Funding Justification: Proposals should include a justification for funding assistance from the program—an explanation as to what specifically could not be accomplished without Federal funding assistance and why the participating organization(s) would be unlikely to carry out the project without such assistance.

D. Application and Submission Information

1. Application through the Unified Export Strategy (UES): Organizations are strongly encouraged to submit their applications to FAS through the web-based UES application. Using the UES application process reduces paperwork and expedites FAS's processing and review cycle. Applicants planning to use the UES system must contact FAS' Program Operations Division to obtain site access information, including a user ID and password. The UES Internet-based application may be found at the following URL address: *https://www.fas.usda.gov/ues/webapp/*.

Although FAS highly recommends applying via the web-based UES application, applicants have the option of submitting an electronic version to FAS at *podadmin@fas.usda.gov*.

2. Content and Form of Application Submission: All TASC proposals must contain complete information about the proposed projects as described in § 1487.5(b) of the TASC program regulations. In addition, in accordance with the Office of Management and Budget's policy directive (68 FR 38402 (June 27, 2003)) regarding the need to identify entities that are receiving government awards, all applicants must submit a Dun and Bradstreet Data Universal Numbering System (DUNS) number. An applicant may request a DUNS number at no cost by calling the dedicated toll-free DUNS number request line at (866) 705–5711.

In addition, in accordance with 2 CFR part 25, each entity that applies to the TASC and does not qualify for an exemption under 2 CFR 25.110 must:

(i) Provide a valid DUNS number in each application or plan it submits to CCC;

(ii) Be registered in the System for Award Management (SAM) prior to submitting an application or plan; and

(iii) Continue to maintain an active SAM registration with current information at all times during which it has an active Federal award or an application or plan under consideration by CCC.

Similarly, in accordance with 2 CFR part 170, each entity that applies to the TASC program and does not qualify for an exception under 2 CFR 170.110(b) must ensure it has the necessary processes and systems in place to comply with the applicable reporting requirements of 2 CFR part 170 should it receive TASC funding.

Incomplete applications and applications that do not otherwise conform to this announcement will not be accepted for review.

3. Submission Dates and Times: TASC proposals are reviewed on a rolling basis during the fiscal year as long as TASC funding is available as set forth below:

- Proposals received by 5 p.m. Eastern Daylight Time, June 3, 2016, will be considered for funding with other proposals received by that date;
- Proposals not approved for funding during the review period will be reconsidered for funding after the review period only if the applicant specifically requests such reconsideration in writing, and only if funding remains available;
- Proposals received after 5 p.m. Eastern Daylight Time, June 3, 2016, will be considered in the order received for funding only if funding remains available.

Notwithstanding the foregoing, a proposal may be submitted for expedited consideration under the TASC Quick Response process if, in addition to meeting all requirements of the TASC program, a proposal clearly identifies a time–sensitive activity. In these cases, a proposal may be submitted at any time for an expedited evaluation. Such a proposal must include a specific request for expedited evaluation.

FAS will track the time and date of receipt of all proposals.

4. Funding Restrictions: Although funded projects may take place in the United States or abroad, all eligible projects must specifically address sanitary, phytosanitary, or technical barriers to the export of U.S. specialty crops.

Certain types of expenses are not eligible for reimbursement by the program, such as the costs of market research, advertising, or other promotional expenses, and will be set forth in the written program agreement between CCC and the participant. CCC will also not reimburse unreasonable expenditures or any expenditure made prior to approval of a proposal.

5. Other Submission Requirements: All applications must be properly submitted through the UES by 5 p.m., Eastern Daylight Time, June 3, 2016, in order to be considered for funding; late submissions received after the deadline will be considered only if funding remains available. All applications submitted by email must be received by 5 p.m. Eastern Daylight Time, June 3, 2016, at *podadmin@fas.usda.gov* in order to receive the same consideration.

E. Application Review Information

1. Criteria: FAS follows the evaluation criteria set forth in § 1487.6 of the TASC regulations. Reviewers will evaluate according to the following criteria:

(1) The nature of the specific export barrier and the extent to which the proposal is likely to successfully remove, resolve, or mitigate that barrier (12.5%);

(2) The potential trade impact of the proposed project on market retention, market access, and market expansion, including the potential for expanding commercial sales in the targeted market (12.5%);

(3) The completeness and viability of the proposal. Among other things, this can include the cost of the project and the amount of other resources dedicated to the project, including cash, goods, and services of the U.S. industry and foreign third parties (15%);

(4) The ability of the organization to provide an experienced staff with the requisite technical and trade experience to execute the proposal (15%);

(5) The extent to which the proposal is targeted to a market in which the United States is generally competitive (17.5%);

(6) The degree to which time is essential to addressing specific export barriers (5%);

(7) The ability of the applicant to provide a broad base of producer representation (12.5%);

(8) The effectiveness and potential of the performance measures (10%);

2. Review and Selection Process: FAS will review proposals for eligibility and will evaluate each proposal against the criteria referred to above. The purpose of this review is to identify meritorious proposals, recommend an appropriate funding level for each proposal based upon these factors, and submit the proposals and funding recommendations to the Deputy Administrator, Office of Trade Programs. FAS may, when appropriate, request the assistance of other U.S. government subject area experts in evaluating the merits of a proposal.

F. Award Administration Information

1. Federal Award Notices: FAS will notify each applicant in writing of the final disposition of the submitted application. FAS will send an approval letter and agreement to each approved applicant. The approval letter and agreement will specify the terms and conditions applicable to the project, including levels of funding, timelines for implementation, and written evaluation requirements.

2. Administrative and National Policy Requirements: The agreements will incorporate the details of each project as approved by FAS. Each agreement will identify terms and conditions pursuant to which CCC will reimburse certain costs of each project. Agreements will also outline the responsibilities of the participant. Interested parties should review the TASC program regulations found at 7 CFR part 1487 in addition to this announcement. TASC program regulations are available at the following URL address: *http://www.fas.usda.gov/programs/technical-assistance-specialty-crops-tasc.* Hard copies may be obtained by contacting the Program Operations Division at (202) 720–4327.

3. Reporting: TASC participants will be required to submit regular interim reports and a final performance report, each of which evaluate the TASC project using the performance measures presented in the approved proposal, as set forth in the written program agreement.

G. Federal Awarding Agency Contact

For additional information and assistance, contact the Program Operations Division, Office of Trade Programs, Foreign Agricultural Service, U.S. Department of Agriculture *by courier:* Room 6512, 1400 Independence Ave. SW., Washington, DC 20250, or *by phone:* (202) 720–4327, or *by fax:* (202) 720–9361, or *by e-mail: podadmin@fas.usda.gov.*

Signed at Washington, DC on the 25th of March, 2016.

Bryce Quick,

Acting Administrator, Foreign Agricultural Service, and Vice President, Commodity Credit Corporation.

[FR Doc. 2016–07633 Filed 4–1–16; 8:45 am]

BILLING CODE 3410–10–P

DEPARTMENT OF AGRICULTURE

Commodity Credit Corporation

Notice of Funds Availability: Inviting Applications for the Quality Samples Program

Announcement Type: New.

Catalog of Federal Domestic Assistance (CFDA) Number: 10.605.

SUMMARY: The Commodity Credit Corporation (CCC) announces it is inviting proposals for the 2017 Quality Samples Program (QSP). The intended effect of this notice is to solicit applications from eligible applicants for fiscal year 2017 and to set out the criteria for the award of funds under the program in October 2016. QSP is administered by personnel of the Foreign Agricultural Service (FAS).

DATES: To be considered for funding, applications must be received by 5 p.m. Eastern Daylight Time, June 3, 2016. Any applications received after this time will be considered only if funds are still available.

FOR FURTHER INFORMATION CONTACT: Entities wishing to apply for funding assistance should contact the Program Operations Division, Office of Trade Programs, Foreign Agricultural Service *by courier:* Room 6512, 1400 Independence Ave. SW., Washington, DC 20250, or *by phone:* (202) 720–4327, or *by fax:* (202) 720–9361, or *by email: podadmin@fas.usda.gov.* Information is also available on the FAS Web site at *http://www.fas.usda.gov/programs/quality-samples-program-qsp.*

SUPPLEMENTARY INFORMATION:

A. Funding Opportunity Description

Authority: QSP is authorized under Section 5(f) of the CCC Charter Act, 15 U.S.C. 714c(f).

Purpose: QSP is designed to encourage the development and expansion of export markets for U.S. agricultural commodities by assisting U.S. entities in providing commodity samples to potential foreign importers to promote a better understanding and appreciation for the high quality of U.S. agricultural commodities.

QSP participants will be responsible for procuring (or arranging for the procurement of) commodity samples, exporting the samples, and providing the on-site technical assistance necessary to facilitate successful use of the samples by importers. Participants that are funded under this announcement may seek reimbursement from QSP for the sample purchase price and for the cost of transporting the samples domestically to the port of export and then to the foreign port or point of entry. Transportation costs from the foreign port or point of entry to the final destination are not eligible for reimbursement. CCC will not reimburse the costs incidental to purchasing and transporting samples, such as: Inspection or documentation fees, certificates of any kind, tariffs, etc. Although providing technical assistance is required for all projects, QSP will not reimburse the costs of providing technical assistance. A QSP participant will be reimbursed after CCC reviews its reimbursement claim and determines that the claim is complete.

General Scope of QSP Projects: QSP projects are the activities undertaken by a QSP participant to provide an appropriate sample of a U.S. agricultural commodity to a foreign importer, or a group of foreign importers, in a given market. The purpose of the project is to provide information to an appropriate target audience regarding the attributes, characteristics, and proper use of the U.S. commodity. A QSP project addresses a single market/commodity combination.

As a general matter, QSP projects should conform to the following guidelines:

- Projects should benefit the represented U.S. industry and not a specific company or brand;
- Projects should develop a new market for a U.S. product, promote a new U.S. product, or promote a new use for a U.S. product rather than promote the substitution of one established U.S. product for another;
- Commodities provided under a QSP project must be available on a commercial basis and in sufficient supply;
- The QSP project must either subject the commodity sample to further processing or substantial transformation in the importing country, or the sample must be used in technical seminars in the importing country designed to demonstrate to an appropriate target audience the proper preparation or use of the sample in the creation of an end product;
- Samples provided in a QSP project shall not be directly used as part of a retail promotion or supplied directly to consumers. However, the end product (that is, the product resulting from further processing, substantial transformation, or a technical preparation seminar) may be provided to end-use consumers to demonstrate to importers consumer preference for that end product;
- Samples shall be in quantities less than a typical commercial sale and limited to the amount sufficient to achieve the project goal (*e.g.*, not more than a full commercial mill run in the destination country); and
- Projects should be completed within one year of CCC approval.

QSP projects shall target foreign importers and audiences who:

- Have not previously purchased the U.S. commodity that will be transported under QSP;
- Are unfamiliar with the variety, quality attributes, or end-use characteristics of the U.S. commodity;
- Have been unsuccessful in previous attempts to import, process, and market the U.S. commodity (*e.g.*, because of improper specification, blending, formulation, sanitary, or phytosanitary issues);
- Are interested in testing or demonstrating the benefits of the U.S. commodity; or
- Need technical assistance in processing or using the U.S. commodity.

B. Award Information

Under this announcement, the number of projects per participant will not be limited. However, individual projects will be limited to $75,000 of QSP reimbursement. Projects comprised only of technical preparation seminars (that is, projects that do not include further processing or substantial transformation of the sample) will be limited to $15,000 of QSP reimbursement due to the need for smaller samples. Financial assistance will be made available on a reimbursement basis only; cash advances will not be made available to any QSP participant.

All proposals will be reviewed against the evaluation criteria contained herein and funds will be awarded on a competitive basis. Funding for successful proposals will be provided through specific agreements between the applicant and CCC. These agreements will incorporate the proposal as approved by FAS. FAS must approve in advance any subsequent changes to the project.

C. Eligibility Information

1. *Eligible Applicants:* Any United States private or government entity with a demonstrated role or interest in exporting U.S. agricultural commodities may apply to the program. Government organizations consist of Federal, State, and local agencies. Private organizations include non-profit trade associations, universities, agricultural cooperatives, state regional trade groups, and profit-making entities.

2. *Cost Sharing:* FAS considers the applicant's willingness to contribute resources, including cash, goods, and services of the U.S. industry and foreign third parties, when determining which proposals to approve for funding.

3. Proposals should include a justification for funding assistance from the program—an explanation as to what specifically could not be accomplished without Federal funding assistance and why the participating organization(s) would be unlikely to carry out the project without such assistance. Applicants may submit more than one proposal.

D. Application and Submission Information

1. *Address to Request Application Package:* Organizations shall submit their QSP applications to FAS through the web-based Uniform Export Strategy (UES) application. The UES allows applicants to submit a single consolidated and strategically coordinated proposal that incorporates requests for funding for virtually all of the FAS marketing programs, financial assistance programs, and market access programs. The suggested UES format encourages applicants to examine the constraints or barriers to trade that they face, identify activities that would help overcome such impediments, consider the entire pool of complementary marketing tools and program resources, and establish realistic export goals.

Applicants must contact FAS' Program Operations Division to obtain UES Web site access information. The Internet-based application may be found at the following URL address: *https://www.fas.usda.gov/ues/webapp/.*

2. *Content and Form of Application Submission:* To be considered for QSP, an applicant must submit to FAS, via the UES, information detailed in this notice. Additionally, in accordance with the Office of Management and Budget's policy directive (68 FR 38402 (June 27, 2003)) regarding the need to identify entities that are receiving government awards, all applicants must submit a Dun and Bradstreet Data Universal Numbering System (DUNS) number. An applicant may request a DUNS number at no cost by calling the dedicated toll-free DUNS number request line at (866) 705–5711.

In addition, in accordance with 2 CFR part 25, each entity that applies to the QSP and does not qualify for an exemption under 2 CFR 25.110 must:

(i) Provide a valid DUNS number in each application or plan it submits to CCC;

(ii) Be registered in the System for Award Management (SAM) prior to submitting an application or plan; and

(iii) Continue to maintain an active SAM registration with current information at all times during which it has an active Federal award or an application or plan under consideration by CCC.

Similarly, in accordance with 2 CFR part 170, each entity that applies to the QSP and does not qualify for an exception under 2 CFR 170.110(b) must ensure it has the necessary processes and systems in place to comply with the applicable reporting requirements of 2 CFR part 170 should it receive QSP funding.

Incomplete applications and applications that do not otherwise conform to this announcement will not be accepted for review.

Proposals should contain, at a minimum, the following:

(a) Organizational information, including:

- Organization's name, address, Chief Executive Officer (or designee), Federal Tax Identification Number (TIN), and DUNS number;
- Type of organization;
- Name, telephone number, fax number, and email address of the primary contact person;
- A description of the organization and its membership;

- A description of the organization's prior export promotion experience; and
- A description of the organization's experience in implementing an appropriate trade/technical assistance component.

(b) Market information, including:

- An assessment of the market;
- A long-term strategy in the market; and
- U.S. export value/volume and market share (historic and goals) for 2010–2016.

(c) Project information, including:

- A brief project title;
- The amount of funding requested;
- The beginning and end dates for the proposed project;
- A brief description of the specific market development trade constraint or opportunity to be addressed by the project;
- A description of the activities planned to address the constraint or opportunity, including how the sample will be used in the end-use performance trial, the attributes of the sample to be demonstrated and its end-use benefit, and details of the trade/technical servicing component (including who will provide and fund this component);
- The performance measures that will be used to benchmark performance and measure the effectiveness of the project, the long-term sales to the market, and the benefits to the represented industry;
- A description of the sample to be provided (*i.e.*, commodity, quantity, quality, type, and grade), including a justification for why a sample with such characteristics is needed (this justification should explain why the project could not be effective with a smaller sample);
- An itemized list of all estimated costs associated with the project for which reimbursement will be sought;
- The importer's role in the project regarding handling and processing the commodity sample; and
- An explanation as to what specifically could not be accomplished without Federal funding assistance and why the participating organization(s) would be unlikely to carry out the project without such assistance;

(d) Information indicating all funding sources and amounts to be contributed by each entity that will supplement implementation of the proposed project. This may include the organization that submitted the proposal, private industry entities, host governments, foreign third parties, CCC, FAS, or other Federal agencies. Contributed resources may include cash, goods, or services.

3. Submission Dates and Times: QSP applications are reviewed on a rolling basis during the fiscal year as long as QSP funding is available as set forth below:

- Proposals received by 5 p.m. Eastern Daylight Time, June 3, 2016, will be considered for funding with other proposals received by that date;
- Proposals not approved for funding during this review period will be reconsidered for funding after the review period only if the applicant specifically requests such reconsideration in writing, and only if funding remains available;
- Proposals received after 5 p.m. Eastern Daylight Time, June 3, 2016, will be considered in the order received for funding only if funding remains available.

4. Other Submission Requirements: All applications must be properly submitted through the UES by 5 p.m., Eastern Daylight Time, June 3, 2016, in order to be considered for funding; submissions received after this deadline will be considered only if funding remains available.

5. Funding Restrictions: Proposals that request more than $75,000 of CCC funding for individual projects will not be considered. Projects comprised only of technical preparation seminars will be limited to $15,000 in QSP funding. CCC will not reimburse unreasonable expenditures or expenditures made prior to approval of a proposal.

E. Application Review Information

1. Criteria and Review Process: FAS will use the following criteria in evaluating QSP proposals, each weighted at 10%:

- The income, population, or market share growth potential in the proposed market;
- Benefits of project would accrue to entire industry, not a single company;
- The proposed sample size is appropriate to the project;
- The ability of the organization to provide an experienced staff with the requisite technical and trade experience to execute the proposal;
- The extent to which the proposal is targeted to a market in which the United States is generally competitive;
- The potential for expanding commercial sales in the proposed market;
- The nature of the specific market constraint or opportunity identified and how well it is addressed by the proposal;
- The extent to which the importer's contribution in terms of handling and processing enhances the potential outcome of the project;
- The amount of reimbursement requested and the organization's willingness to contribute resources, including cash, goods, and services of the U.S. industry and foreign third parties; and
- How well the proposed technical assistance component assures that performance trials will effectively demonstrate the intended end-use benefit.

FAS will also review and evaluate how well the following unweighted criteria are addressed in the proposal:

- The quality of the performance measures and how effective they will be in demonstrating the impact of the project;
- The assessment of the market;
- The long-term strategy in the market; and
- Export goals in each country.

Proposals will be evaluated by the appropriate Commodity Branch in FAS' Cooperator Programs Division. The Commodity Branches will review each proposal against the factors described above. The purpose of this review is to identify meritorious proposals, recommend an appropriate funding level for each proposal based upon these factors, and submit proposals and funding recommendations to the Deputy Administrator, Office of Trade Programs.

2. Anticipated Announcement Date: Announcements of funding decisions for QSP are anticipated during October 2016.

F. Award Administration Information

1. *Award Notices:* FAS will notify each applicant in writing of the final disposition of the submitted application. FAS will send an approval letter and agreement to each approved applicant. The approval letter and agreement will specify the terms and conditions applicable to the project, including the levels of QSP funding and any cost-share contribution requirements.

2. *Administrative and National Policy Requirements:* The agreements will incorporate the details of each project as approved by FAS. Each agreement will identify terms and conditions pursuant to which CCC will reimburse certain costs of each project. Agreements will also outline the responsibilities of the participant, including, but not limited to, procurement (or arranging for procurement) of the commodity sample at a fair market price, arranging for transportation of the commodity sample within the time limit specified in the agreement (organizations should endeavor to ship commodities within 6 months of the effective date of the agreement), compliance with cargo preference requirements (shipment on United States flag vessels, as required),

compliance with the Fly America Act requirements (shipment on United States air carriers, as required), timely and effective implementation of technical assistance, and submission of a written evaluation report within 90 days of expiration or termination of the agreement.

QSP projects are subject to review and verification by FAS' Compliance, Security and Emergency Planning Division. Upon request, a QSP participant shall provide to CCC the original documents that support the participant's reimbursement claims. CCC may deny a claim for reimbursement if the claim is not supported by adequate documentation.

3. *Reporting:* A written evaluation report must be submitted via the UES within 90 days of the expiration or termination of each participant's QSP agreement. Evaluation reports should address all performance measures that were presented in the proposal.

G. Agency Contact(s)

For additional information and assistance, contact the Program Operations Division, Office of Trade Programs, Foreign Agricultural Service, U.S. Department of Agriculture *by courier:* Room 6512, 1400 Independence Ave. SW., Washington, DC 20250, or *by phone:* (202) 720–4327, or *by fax:* (202) 720–9361, or *by email: podadmin@fas.usda.gov.*

Signed at Washington, DC, on the 25th of March, 2016.

Bryce Quick,

Acting Administrator, Foreign Agricultural Service, and Vice President, Commodity Credit Corporation.

[FR Doc. 2016–07635 Filed 4–1–16; 8:45 am]

BILLING CODE 3410–10–P

DEPARTMENT OF AGRICULTURE

Forest Service

Ashley Resource Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Ashley Resource Advisory Committee (RAC) will meet in Vernal, Utah. The committee is authorized under the Secure Rural Schools and Community Self-Determination Act (the Act) and operates in compliance with the Federal Advisory Committee Act. The purpose of the committee is to improve collaborative relationships and to provide advice and recommendations to the Forest Service concerning projects and funding consistent with Title II of the Act. RAC information can be found at the following Web site: *http://cloudapps-usda-gov.force.com/FSSRS/RAC_Page?id=001t0000002JcvKAAS.*

DATES: Meeting will be held from 6:00 p.m. to 8:00 p.m. on April 20, 2016.

All RAC meetings are subject to cancellation. For status of meeting prior to attendance, please contact the person listed under **FOR FURTHER INFORMATION CONTACT.**

ADDRESSES: The meeting will be held at Ashley National Forest (NF) Supervisor's Office, 355 North Vernal Avenue, Vernal, Utah.

Written comments may be submitted as described under **SUPPLEMENTARY INFORMATION.** All comments, including names and addresses when provided, are placed in the record and are available for public inspection and copying. The public may inspect comments received at Ashley NF Supervisor's Office. Please call ahead to facilitate entry into the building.

FOR FURTHER INFORMATION CONTACT: Louis Haynes, RAC Coordinator, by phone at 435–781–5105 or via email at *ljhaynes@fs.fed.us.*

Individuals who use telecommunication devices for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8:00 a.m. and 8:00 p.m., Eastern Standard Time, Monday through Friday.

SUPPLEMENTARY INFORMATION: The purpose of the meeting is to:

1. Conduct a final evaluation and roll call;
2. Vote on each submitted project; and
3. Finalize recommendations for funding of project long forms for the Designated Federal Officer's approval.

The meeting is open to the public. The agenda will include time for people to make oral statements of three minutes or less. Individuals wishing to make an oral statement should request in writing by April 6, 2016, to be scheduled on the agenda. Anyone who would like to bring related matters to the attention of the committee may file written statements with the committee staff before or after the meeting. Written comments and requests for time for oral comments must be sent to Attention: Louis Haynes, RAC Coordinator, Ashley NF Supervisor's Office, 355 North Vernal Avenue, Vernal, Utah 84078; by email to *ljhaynes@fs.fed.us,* or via facsimile to 435–781–5142.

Meeting Accommodations: If you are a person requiring reasonable accommodation, please make requests in advance for sign language interpreting, assistive listening devices, or other reasonable accommodation. For access to the facility, please contact the person listed in the section titled **FOR FURTHER INFORMATION CONTACT.** All reasonable accommodation requests are managed on a case by case basis.

Dated: March 25, 2016.

Dustin Bambrough,

Acting Forest Supervisor.

[FR Doc. 2016–07568 Filed 4–1–16; 8:45 am]

BILLING CODE 3411–15–P

DEPARTMENT OF AGRICULTURE

Rural Utilities Service

Information Collection Activity; Comment Request

AGENCY: Rural Utilities Service, USDA.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended), the Rural Utilities Service (RUS) invites comments on this information collection for which approval from the Office of Management and Budget (OMB) will be requested.

DATES: Comments on this notice must be received by June 3, 2016.

FOR FURTHER INFORMATION CONTACT: Thomas P. Dickson, Acting Director, Program Development and Regulatory Analysis, USDA Rural Utilities Service, Rural Development, United States Department of Agriculture, 1400 Independence Avenue SW., STOP 1522, Room 5164, South Building, Washington, DC 20250–1522. Telephone: (202) 690–4492. FAX: (202) 720–8435. Email: *Thomas.Dickson@wdc.usda.gov*

SUPPLEMENTARY INFORMATION: The Office of Management and Budget's (OMB) regulation (5 CFR 1320) implementing provisions of the Paperwork Reduction Act of 1995 (Pub. L. 104–13) requires that interested members of the public and affected agencies have an opportunity to comment on information collection and recordkeeping activities (see 5 CFR 1320.8(d)). This notice identifies an information collection that RUS is submitting to OMB for extension.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility; (b) the accuracy of the Agency's estimate of the burden of the proposed collection of information including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology. Comments may be sent to: Thomas P. Dickson, Acting Director, Program Development and Regulatory Analysis, USDA Rural Utilities Service, 1400 Independence Avenue SW., STOP 1522, Washington, DC 20250–1522. FAX: (202) 720–8435. Email: *Thomas.Dickson@wdc.usda.gov.*

Title: Wholesale Contracts for the Purchase and Sale of Electric Power.

OMB Control Number: 0572–0089.

Type of Request: Extension of a currently approved information collection.

Abstract: Most RUS financed electric systems are cooperatives and are organized in a two-tiered structure. Retail customers are members of the distribution system that provides electricity to their homes and business. Distribution cooperatives, in turn, are members of power supply cooperatives, also known as generation and transmission cooperatives (G&T's) that generate or purchase power and transmit the power to the distribution systems.

For a distribution system, a lien on the borrower's assets generally represents adequate security. However, since most G&T revenues flow from its distribution members, RUS requires, as a condition of a loan or loan guarantee to a G&T the long-term requirements wholesale power contract to purchase their power from the G&T at rates that cover all the G&T's expenses, including debt service and margins. RUS Form 444 is the standard form of the wholesale power contract. The Form is used by RUS G&T borrowers to enter into agreement with their distribution members for purchase of power from the G&T. Most borrowers adapt this form to meet their specific needs. The contract is prepared and executed by the G&T and each member and by RUS and the information allows RUS to determine credit quality and credit worthiness to determine repayment ability for loans and loan guarantees.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 6 hours per response.

Respondents: Small business or other for-profit; not-for-profit organizations.

Estimated Number of Respondents: 20.

Estimated Number of Responses per Respondent: 1.

Estimated Total Annual Burden on Respondents: 120 hours.

Copies of this information collection can be obtained from Rebecca Hunt, RUS Program Development and Regulatory Analysis, at (202) 205–3660; Facsimile: (202) 720–8435 or Email: *Rebecca.Hunt@wdc.usda.gov.*

All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Dated: March 28, 2016.

Brandon McBride,

Administrator, Rural Utilities Service.

[FR Doc. 2016–07506 Filed 4–1–16; 8:45 am]

BILLING CODE P

DEPARTMENT OF COMMERCE

Bureau of Economic Analysis

[Docket No. 160316249–6249–01]

XRIN 0691–XC051

BE–15: Annual Survey of Foreign Direct Investment in the United States

AGENCY: Bureau of Economic Analysis, Commerce.

ACTION: Notice of reporting requirements.

SUMMARY: By this Notice, the Bureau of Economic Analysis (BEA), Department of Commerce, is informing the public that it is conducting the mandatory survey titled Annual Survey of Foreign Direct Investment in the United States (BE–15). This survey is authorized by the International Investment and Trade in Services Survey Act.

SUPPLEMENTARY INFORMATION: This Notice constitutes legal notification to all U.S. persons (defined below) who meet the reporting requirements set forth in this Notice that they must respond to, and comply with, the BE–15. A completed report covering a reporting company's fiscal year ending during the previous calendar year is due by May 31 (or by June 30 for reporting companies that use BEA's eFile system). This notice is being issued in conformance with the rule BEA issued in 2012 (77 FR 24373) establishing guidelines for collecting data on international trade in services and direct investment through notices, rather than through rulemaking. Additional information about BEA's collection of data on international trade in services and direct investment can be found in the 2012 rule, the International Investment and Trade in Services Survey Act (22 U.S.C. 3101 *et seq.*), and 15 CFR part 801. Survey data on international trade in services and direct investment that are not collected pursuant to the 2012 rule are described separately in 15 CFR part 801. The BE–15 survey forms and instructions are available on the BEA Web site at *www.bea.gov/fdi.*

Definitions

(a) *United States,* when used in a geographic sense, means the 50 States, the District of Columbia, the Commonwealth of Puerto Rico, and all territories and possessions of the United States.

(b) *Foreign,* when used in a geographic sense, means that which is situated outside the United States or which belongs to or is characteristic of a country other than the United States.

(c) *Person* means any individual, branch, partnership, associated group, association, estate, trust, corporation, or other organization (whether or not organized under the laws of any State), and any government (including a foreign government, the U.S. Government, a State or local government, and any agency, corporation, financial institution, or other entity or instrumentality thereof, including a government-sponsored agency).

(d) *Business enterprise* means any organization, association, branch, or venture that exists for profit-making purposes or to otherwise secure economic advantage, and any ownership of any real estate.

Reporting

Notice of specific reporting requirements, including who is to report, the information to be reported, the manner of reporting, and the time and place of filing reports, will be mailed to those required to complete this survey.

Who Must Report: (a) Reports are required from each U.S. business enterprise in which a foreign person has a direct and/or indirect ownership interest of at least 10 percent of the voting stock in an incorporated business enterprise, or an equivalent interest in an unincorporated business enterprise, and that meets the additional conditions detailed in Form BE–15.

(b) Entities required to report will be contacted individually by BEA. Entities not contacted by BEA have no reporting responsibilities.

What To Report: The survey collects information on the operations of U.S. affiliates of foreign companies.

How To Report: Reports can be filed using BEA's electronic reporting system at *www.bea.gov/efile.* Copies of the survey forms and instructions, which contain complete information on reporting procedures and definitions, can be downloaded from the BEA Web site given above. Form BE–15 inquiries can be made by phone to (202) 606–5615 or by sending an email to *be12/15@bea.gov.*

When To Report: A completed report covering a reporting company's fiscal year ending during the previous calendar year is due by May 31 (or by June 30 for reporting companies that use BEA's eFile system).

Paperwork Reduction Act Notice

This data collection has been approved by the Office of Management and Budget (OMB) in accordance with the Paperwork Reduction Act and assigned control number 0608–0034.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid control number assigned by OMB. Public reporting burden for this collection of information is estimated to average 18.2 hours per response. Additional information regarding this burden estimate may be viewed at *www.reginfo.gov;* under the Information Collection Review tab, click on "Search" and use the above OMB control number to search for the current survey instrument. Send comments regarding this burden estimate to Director, Bureau of Economic Analysis (BE–1), U.S. Department of Commerce, Washington, DC 20230; and to the Office of Management and Budget, Paperwork Reduction Project 0608–0034, Washington, DC 20503.

Authority: 22 U.S.C. 3101–3108.

Brian C. Moyer,

Director, Bureau of Economic Analysis.

[FR Doc. 2016–07460 Filed 4–1–16; 8:45 am]

BILLING CODE 3510–06–P

DEPARTMENT OF COMMERCE

Bureau of Economic Analysis

[Docket No. 160303194–6194–01]

XRIN: 0691–XC043

BE–37: Quarterly Survey of U.S. Airline Operators' Foreign Revenues and Expenses

AGENCY: Bureau of Economic Analysis, Commerce.

ACTION: Notice of reporting requirements.

SUMMARY: By this Notice, the Bureau of Economic Analysis (BEA), Department of Commerce, is informing the public that it is conducting the mandatory survey titled Quarterly Survey of U.S. Airline Operators' Foreign Revenues and Expenses (BE–37). This survey is authorized by the International Investment and Trade in Services Survey Act.

SUPPLEMENTARY INFORMATION: This Notice constitutes legal notification to all U.S. persons (defined below) who meet the reporting requirements set forth in this Notice that they must respond to, and comply with, the BE–37. Reports are due 45 days after the end of each calendar quarter. This notice is being issued in conformance with the rule BEA issued in 2012 (77 FR 24373) establishing guidelines for collecting data on international trade in services and direct investment through notices, rather than through rulemaking. Additional information about BEA's collection of data on international trade in services and direct investment can be found in the 2012 rule, the International Investment and Trade in Services Survey Act (22 U.S.C. 3101 *et seq.*), and 15 CFR part 801. Survey data on international trade in services and direct investment that are not collected pursuant to the 2012 rule are described separately in 15 CFR part 801. The BE–37 survey form and instructions are available on the BEA Web site at *www.bea.gov/ssb.*

Definitions

(a) *Person* means any individual, branch, partnership, associated group, association, estate, trust, corporation, or other organization (whether or not organized under the laws of any State), and any government (including a foreign government, the U.S. Government, a State or local government, and any agency, corporation, financial institution, or other entity or instrumentality thereof, including a government-sponsored agency).

(b) *U.S. person* means any person resident in the United States or subject to the jurisdiction of the United States.

(c) *United States,* when used in a geographic sense, means the 50 States, the District of Columbia, the Commonwealth of Puerto Rico, and all territories and possessions of the United States.

(d) *Foreign person* means any person resident outside the United States or subject to the jurisdiction of a country other than the United States.

Reporting

Notice of specific reporting requirements, including who is to report, the information to be reported, the manner of reporting, and the time and place of filing reports, will be mailed to those required to complete this survey.

Who Must Report: (a) Reports are required from each U.S. person whose total covered revenues or total covered expenses were $500,000 or more during the previous year, or are expected to be $500,000 or more during the current year.

(b) Entities required to report will be contacted individually by BEA. Entities not contacted by BEA have no reporting responsibilities.

What To Report: The survey collects information on U.S. airline operators' foreign revenues and expenses.

How To Report: Reports can be filed using BEA's electronic reporting system at *www.bea.gov/efile.* Copies of the survey forms and instructions, which contain complete information on reporting procedures and definitions, can be downloaded from the BEA Web site given above. Form BE–37 inquiries can be made by phone to BEA at (202) 606–5588 or by sending an email to *be37help@bea.gov.*

When To Report: Reports are due to BEA 45 days after the end of each calendar quarter.

Paperwork Reduction Act Notice

This data collection has been approved by the Office of Management and Budget (OMB) in accordance with the Paperwork Reduction Act and assigned control number 0608–0011. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid control number assigned by OMB. Public reporting burden for this collection of information is estimated to average 4 hours per response. Additional information regarding this burden estimate may be viewed at *www.reginfo.gov;* under the Information Collection Review tab, click on "Search" and use the above OMB control number to search for the current survey instrument. Send comments regarding this burden estimate to Director, Bureau of Economic Analysis (BE–1), U.S. Department of Commerce, Washington, DC 20230; and to the Office of Management and Budget, Paperwork Reduction Project 0608–0011, Washington DC 20503.

Authority: 22 U.S.C. 3101–3108.

Brian C. Moyer,

Director, Bureau of Economic Analysis.

[FR Doc. 2016–07468 Filed 4–1–16; 8:45 am]

BILLING CODE 3510–06–P

DEPARTMENT OF COMMERCE

Bureau of Economic Analysis

[Docket No. 160304201–6201–01]

XRIN 0691–XC049

BE–577: Quarterly Survey of U.S. Direct Investment Abroad—Transactions of U.S. Reporter With Foreign Affiliate

AGENCY: Bureau of Economic Analysis, Commerce.

ACTION: Notice of reporting requirements.

SUMMARY: By this Notice, the Bureau of Economic Analysis (BEA), Department of Commerce, is informing the public that it is conducting the mandatory survey titled Quarterly Survey of U.S. Direct Investment Abroad—Transactions of U.S. Reporter with Foreign Affiliate (BE–577). This survey is authorized by the International Investment and Trade in Services Survey Act.

SUPPLEMENTARY INFORMATION: This Notice constitutes legal notification to all U.S. persons (defined below) who meet the reporting requirements set forth in this Notice that they must respond to, and comply with, the BE–577. Reports are due 30 days after the close of each calendar or fiscal quarter; 45 days if the report is for the final quarter of the financial reporting year. This notice is being issued in conformance with the rule BEA issued in 2012 (77 FR 24373) establishing guidelines for collecting data on international trade in services and direct investment through notices, rather than through rulemaking. Additional information about BEA's collection of data on international trade in services and direct investment can be found in the 2012 rule, the International Investment and Trade in Services Survey Act (22 U.S.C. 3101 *et seq.*), and 15 CFR part 801. Survey data on international trade in services and direct investment that are not collected pursuant to the 2012 rule are described separately in 15 CFR part 801. The BE–577 survey forms and instructions are available on the BEA Web site at *www.bea.gov/dia.*

Definitions

(a) *United States,* when used in a geographic sense, means the 50 States, the District of Columbia, the Commonwealth of Puerto Rico, and all territories and possessions of the United States.

(b) *Foreign,* when used in a geographic sense, means that which is situated outside the United States or which belongs to or is characteristic of a country other than the United States.

(c) *Person* means any individual, branch, partnership, associated group, association, estate, trust, corporation, or other organization (whether or not organized under the laws of any State), and any government (including a foreign government, the U.S. Government, a State or local government, and any agency, corporation, financial institution, or other entity or instrumentality thereof, including a government-sponsored agency).

(d) *Business enterprise* means any organization, association, branch, or venture that exists for profit-making purposes or to otherwise secure economic advantage, and any ownership of any real estate.

Reporting

Notice of specific reporting requirements, including who is to report, the information to be reported, the manner of reporting, and the time and place of filing reports, will be mailed to those required to complete this survey.

Who Must Report: (a) Reports are required from each U.S. person that has a direct and/or indirect ownership interest of at least 10 percent of the voting stock in an incorporated foreign business enterprise, or an equivalent interest in an unincorporated foreign business enterprise, and that meets the additional conditions detailed in Form BE–577.

(b) Entities required to report will be contacted individually by BEA. Entities not contacted by BEA have no reporting responsibilities.

What To Report: The survey collects information on transactions between parent companies and their affiliates and on direct investment positions (stocks).

How To Report: Reports can be filed using BEA's electronic reporting system at *www.bea.gov/efile.* Copies of the survey form and instructions, which contain complete information on reporting procedures and definitions, can be downloaded from the BEA Web site given above. Form BE–577 inquiries can be made by phone to (202) 606–5557 or by sending an email to *be577@bea.gov.*

When To Report: Reports are due to BEA 30 days after the close of each calendar or fiscal quarter; 45 days if the report is for the final quarter of the financial reporting year.

Paperwork Reduction Act Notice

This data collection has been approved by the Office of Management and Budget (OMB) in accordance with the Paperwork Reduction Act and assigned control number 0608–0004. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid control number assigned by OMB. Public reporting burden for this collection of information is estimated to average 1 hour per response. Additional information regarding this burden estimate may be viewed at *www.reginfo.gov;* under the Information Collection Review tab, click on "Search" and use the above OMB control number to search for the current survey instrument. Send comments regarding this burden estimate to Director, Bureau of Economic Analysis (BE–1), U.S. Department of Commerce, Washington, DC 20230; and to the Office of Management and Budget, Paperwork Reduction Project 0608–0004, Washington, DC 20503.

Authority: 22 U.S.C. 3101–3108.

Brian C. Moyer,
Director, Bureau of Economic Analysis.

[FR Doc. 2016–07472 Filed 4–1–16; 8:45 am]
BILLING CODE 3510–06–P

DEPARTMENT OF COMMERCE

Bureau of Economic Analysis

[Docket No. 160304199–6199–01]

XRIN 0691–XC047

BE–125: Quarterly Survey of Transactions in Selected Services and Intellectual Property With Foreign Persons

AGENCY: Bureau of Economic Analysis, Commerce.

ACTION: Notice of Reporting Requirements.

SUMMARY: By this Notice, the Bureau of Economic Analysis (BEA), Department of Commerce, is informing the public that it is conducting the mandatory survey titled Quarterly Survey of Transactions in Selected Services and Intellectual Property with Foreign Persons (BE–125). This survey is authorized by the International Investment and Trade in Services Survey Act.

SUPPLEMENTARY INFORMATION: This Notice constitutes legal notification to all U.S. persons (defined below) who meet the reporting requirements set forth in this Notice that they must respond to, and comply with, the BE–

125. Reports are due 45 days after the end of each fiscal quarter except for the final quarter. After the end of fiscal year of the U.S. person, reports must be filed within 90 days. This notice is being issued in conformance with the rule BEA issued in 2012 (77 FR 24373) establishing guidelines for collecting data on international trade in services and direct investment through notices, rather than through rulemaking. Additional information about BEA's collection of data on international trade in services and direct investment can be found in the 2012 rule, the International Investment and Trade in Services Survey Act (22 U.S.C. 3101 *et seq.*), and 15 CFR part 801. Survey data on international trade in services and direct investment that are not collected pursuant to the 2012 rule are described separately in 15 CFR part 801. The BE–125 survey form and instructions are available on the BEA Web site at *www.bea.gov/ssb.*

Definitions

(a) *Person* means any individual, branch, partnership, associated group, association, estate, trust, corporation, or other organization (whether or not organized under the laws of any State), and any government (including a foreign government, the U.S. Government, a State or local government, and any agency, corporation, financial institution, or other entity or instrumentality thereof, including a government-sponsored agency).

(b) *U.S. person* means any person resident in the United States or subject to the jurisdiction of the United States.

(c) *United States,* when used in a geographic sense, means the 50 States, the District of Columbia, the Commonwealth of Puerto Rico, and all territories and possessions of the United States.

(d) *Foreign person* means any person resident outside the United States or subject to the jurisdiction of a country other than the United States.

Reporting

Notice of specific reporting requirements, including who is to report, the information to be reported, the manner of reporting, and the time and place of filing reports, will be mailed to those required to complete this survey.

Who Must Report: (a) Reports are required from each U.S. person who had sales of covered services or intellectual property to foreign persons that exceeded $6 million during the previous fiscal year, or are expected to exceed that amount during the current fiscal year; or had purchases of covered services or intellectual property from foreign persons that exceeded $4 million during the previous fiscal year, or are expected to exceed that amount during the current fiscal year. Because the thresholds are applied separately to sales and purchases, the reporting requirements may apply only to sales, only to purchases, or to both sales and purchases.

(b) Entities required to report will be contacted individually by BEA. Entities not contacted by BEA have no reporting responsibilities.

What To Report: The survey collects information on U.S. international trade in selected services and intellectual property.

How To Report: Reports can be filed using BEA's electronic reporting system at *www.bea.gov/efile.* Copies of the survey forms and instructions, which contain complete information on reporting procedures and definitions, can be downloaded from the BEA Web site given above. Form BE–125 inquiries can be made by phone to BEA at (202) 606–5588 or by sending an email to *be125help@bea.gov.*

When To Report: Reports are due to BEA 45 days after the end of each fiscal quarter, except for the final quarter of the reporter's fiscal year when reports must be filed within 90 days.

Paperwork Reduction Act Notice

This data collection has been approved by the Office of Management and Budget (OMB) in accordance with the Paperwork Reduction Act and assigned control number 0608–0067. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid control number assigned by OMB. Public reporting burden for this collection of information is estimated to average 18 hours per response. Additional information regarding this burden estimate may be viewed at *www.reginfo.gov;* under the Information Collection Review tab, click on "Search" and use the above OMB control number to search for the current survey instrument. Send comments regarding this burden estimate to Director, Bureau of Economic Analysis (BE–1), U.S. Department of Commerce, Washington, DC 20230; and to the Office of Management and Budget, Paperwork Reduction Project 0608–0067, Washington, DC 20503.

Authority: 22 U.S.C. 3101–3108.

Brian C. Moyer,

Director, Bureau of Economic Analysis.

[FR Doc. 2016–07470 Filed 4–1–16; 8:45 am]

BILLING CODE 3510–06–P

DEPARTMENT OF COMMERCE

Bureau of Economic Analysis

[Docket No. 160304202–6202–01]

XRIN: 0691–XC050

BE–605: Quarterly Survey of Foreign Direct Investment in the United States—Transactions of U.S. Affiliate With Foreign Parent

AGENCY: Bureau of Economic Analysis, Commerce.

ACTION: Notice of reporting requirements.

SUMMARY: By this Notice, the Bureau of Economic Analysis (BEA), Department of Commerce, is informing the public that it is conducting the mandatory survey titled Quarterly Survey of Foreign Direct Investment in the United States—Transactions of U.S. Affiliate with Foreign Parent (BE–605). This survey is authorized by the International Investment and Trade in Services Survey Act.

SUPPLEMENTARY INFORMATION: This Notice constitutes legal notification to all U.S. persons (defined below) who meet the reporting requirements set forth in this Notice that they must respond to, and comply with, the BE–605. Reports are due 30 days after the close of each calendar or fiscal quarter; 45 days if the report is for the final quarter of the financial reporting year. This notice is being issued in conformance with the rule BEA issued in 2012 (77 FR 24373) establishing guidelines for collecting data on international trade in services and direct investment through notices, rather than through rulemaking. Additional information about BEA's collection of data on international trade in services and direct investment can be found in the 2012 rule, the International Investment and Trade in Services Survey Act (22 U.S.C. 3101 *et seq.*), and 15 CFR part 801. Survey data on international trade in services and direct investment that are not collected pursuant to the 2012 rule are described separately in 15 CFR part 801. The BE–605 survey forms and instructions are available on the BEA Web site at *www.bea.gov/fdi.*

Definitions

(a) *United States,* when used in a geographic sense, means the 50 States, the District of Columbia, the Commonwealth of Puerto Rico, and all territories and possessions of the United States.

(b) *Foreign,* when used in a geographic sense, means that which is situated outside the United States or which belongs to or is characteristic of a country other than the United States.

(c) *Person* means any individual, branch, partnership, associated group, association, estate, trust, corporation, or other organization (whether or not organized under the laws of any State), and any government (including a foreign government, the U.S. Government, a State or local government, and any agency, corporation, financial institution, or other entity or instrumentality thereof, including a government-sponsored agency).

(d) *Business enterprise* means any organization, association, branch, or venture that exists for profit-making purposes or to otherwise secure economic advantage, and any ownership of any real estate.

Reporting

Notice of specific reporting requirements, including who is to report, the information to be reported, the manner of reporting, and the time and place of filing reports, will be mailed to those required to complete this survey.

Who Must Report: (a) Reports are required from each U.S. business enterprise in which a foreign person has a direct and/or indirect ownership interest of at least 10 percent of the voting stock in an incorporated business enterprise, or an equivalent interest in an unincorporated business enterprise, and that meets the additional conditions detailed in Form BE–605.

(b) Entities required to report will be contacted individually by BEA. Entities not contacted by BEA have no reporting responsibilities.

What To Report: The survey collects information on transactions between parent companies and their affiliates and on direct investment positions (stocks).

How To Report: Reports can be filed using BEA's electronic reporting system at *www.bea.gov/efile.* Copies of the survey form and instructions, which contain complete information on reporting procedures and definitions, can be downloaded from the BEA Web site given above. Form BE–605 inquiries can be made by phone to (202) 606–5577 or by sending an email to *be605@bea.gov.*

When To Report: Reports are due to BEA 30 days after the close of each calendar or fiscal quarter; 45 days if the report is for the final quarter of the financial reporting year.

Paperwork Reduction Act Notice

This data collection has been approved by the Office of Management and Budget (OMB) in accordance with the Paperwork Reduction Act and assigned control number 0608–0009. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid control number assigned by OMB. Public reporting burden for this collection of information is estimated to average 1 hour per response. Additional information regarding this burden estimate may be viewed at *www.reginfo.gov;* under the Information Collection Review tab, click on "Search" and use the above OMB control number to search for the current survey instrument. Send comments regarding this burden estimate to Director, Bureau of Economic Analysis (BE–1), U.S. Department of Commerce, Washington, DC 20230; and to the Office of Management and Budget, Paperwork Reduction Project 0608–0009, Washington, DC 20503.

Authority: 22 U.S.C. 3101–3108.

Brian C. Moyer,
Director, Bureau of Economic Analysis.

[FR Doc. 2016–07471 Filed 4–1–16; 8:45 am]
BILLING CODE 3510–06–P

DEPARTMENT OF COMMERCE

Bureau of Economic Analysis

[Docket No. 160304195–6195–01]

RIN 0691–XC044

BE–30: Quarterly Survey of Ocean Freight Revenues and Foreign Expenses of U.S. Carriers

AGENCY: Bureau of Economic Analysis, Commerce.

ACTION: Notice of reporting requirements.

SUMMARY: By this Notice, the Bureau of Economic Analysis (BEA), Department of Commerce, is informing the public that it is conducting the mandatory survey titled Quarterly Survey of Ocean Freight Revenues and Foreign Expenses of U.S. Carriers (BE–30). This survey is authorized by the International Investment and Trade in Services Survey Act.

SUPPLEMENTARY INFORMATION: This Notice constitutes legal notification to all U.S. persons (defined below) who meet the reporting requirements set forth in this Notice that they must respond to, and comply with, the BE–30. Reports are due 45 days after the end of each calendar quarter. This notice is being issued in conformance with the rule BEA issued in 2012 (77 FR 24373) establishing guidelines for collecting data on international trade in services and direct investment through notices, rather than through rulemaking. Additional information about BEA's collection of data on international trade in services and direct investment can be found in the 2012 rule, the International Investment and Trade in Services Survey Act (22 U.S.C. 3101 *et seq.*), and 15 CFR part 801. Survey data on international trade in services and direct investment that are not collected pursuant to the 2012 rule are described separately in 15 CFR part 801. The BE–30 survey form and instructions are available on the BEA Web site at *www.bea.gov/ssb.*

Definitions

(a) *Person* means any individual, branch, partnership, associated group, association, estate, trust, corporation, or other organization (whether or not organized under the laws of any State), and any government (including a foreign government, the U.S. Government, a State or local government, and any agency, corporation, financial institution, or other entity or instrumentality thereof, including a government-sponsored agency).

(b) *U.S. person* means any person resident in the United States or subject to the jurisdiction of the United States.

(c) *United States,* when used in a geographic sense, means the 50 States, the District of Columbia, the Commonwealth of Puerto Rico, and all territories and possessions of the United States.

(d) *Foreign person* means any person resident outside the United States or subject to the jurisdiction of a country other than the United States.

Reporting

Notice of specific reporting requirements, including who is to report, the information to be reported, the manner of reporting, and the time and place of filing reports, will be mailed to those required to complete this survey.

Who Must Report: (a) Reports are required from each U.S. person whose total covered revenues or total covered expenses were $500,000 or more during the previous year, or are expected to be $500,000 or more during the current year.

(b) Entities required to report will be contacted individually by BEA. Entities not contacted by BEA have no reporting responsibilities.

What To Report: The survey collects information on U.S. ocean freight carriers' foreign revenues and expenses.

How To Report: Reports can be filed using BEA's electronic reporting system at *www.bea.gov/efile.* Copies of the survey forms and instructions, which contain complete information on reporting procedures and definitions, can be downloaded from the BEA Web site given above. Form BE–30 inquiries can be made by phone to BEA at (202) 606–5588 or by sending an email to *be30help@bea.gov.*

When To Report: Reports are due to BEA 45 days after the end of each calendar quarter.

Paperwork Reduction Act Notice

This data collection has been approved by the Office of Management and Budget (OMB) in accordance with the Paperwork Reduction Act and assigned control number 0608–0011. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid control number assigned by OMB. Public reporting burden for this collection of information is estimated to average 4 hours per response. Additional information regarding this burden estimate may be viewed at *www.reginfo.gov;* under the Information Collection Review tab, click on "Search" and use the above OMB control number to search for the current survey instrument. Send comments regarding this burden estimate to Director, Bureau of Economic Analysis (BE–1), U.S. Department of Commerce, Washington, DC 20230; and to the Office of Management and Budget, Paperwork Reduction Project 0608–0011, Washington, DC 20503.

Authority: 22 U.S.C. 3101–3108.

Brian C. Moyer,

Director, Bureau of Economic Analysis.

[FR Doc. 2016–07465 Filed 4–1–16; 8:45 am]

BILLING CODE 3510–06–P

DEPARTMENT OF COMMERCE

Bureau of Economic Analysis

[Docket No. 160304197–6197–01]

RIN 0691–XC045

BE–150: Quarterly Survey of Payment Card and Bank Card Transactions Related to International Travel

AGENCY: Bureau of Economic Analysis, Commerce.

ACTION: Notice of reporting requirements.

SUMMARY: By this Notice, the Bureau of Economic Analysis (BEA), Department of Commerce, is informing the public that it is conducting the mandatory survey titled Quarterly Survey of Payment Card and Bank Card Transactions Related to International Travel (BE–150). This survey is authorized by the International Investment and Trade in Services Survey Act.

SUPPLEMENTARY INFORMATION: This Notice constitutes legal notification to all U.S. persons (defined below) who meet the reporting requirements set forth in this Notice that they must respond to, and comply with, the BE–150. Reports are due 45 days after the end of each calendar quarter. This notice is being issued in conformance with the rule BEA issued in 2012 (77 FR 24373) establishing guidelines for collecting data on international trade in services and direct investment through notices, rather than through rulemaking. Additional information about BEA's collection of data on international trade in services and direct investment can be found in the 2012 rule, the International Investment and Trade in Services Survey Act (22 U.S.C. 3101 *et seq.*), and 15 CFR part 801. Survey data on international trade in services and direct investment that are not collected pursuant to the 2012 rule are described separately in 15 CFR part 801. The BE–150 survey forms and instructions are available on the BEA Web site at *www.bea.gov/ssb.*

Definitions

(a) *Person* means any individual, branch, partnership, associated group, association, estate, trust, corporation, or other organization (whether or not organized under the laws of any State), and any government (including a foreign government, the U.S. Government, a State or local government, and any agency, corporation, financial institution, or other entity or instrumentality thereof, including a government-sponsored agency).

(b) *U.S. person* means any person resident in the United States or subject to the jurisdiction of the United States.

(c) *United States,* when used in a geographic sense, means the 50 States, the District of Columbia, the Commonwealth of Puerto Rico, and all territories and possessions of the United States.

(d) *Foreign person* means any person resident outside the United States or subject to the jurisdiction of a country other than the United States.

Reporting

Notice of specific reporting requirements, including who is to report, the information to be reported, the manner of reporting, and the time and place of filing reports, will be mailed to those required to complete this survey.

Who Must Report: (a) U.S. credit card companies and personal identification number (PIN)-based debit network companies that process payment and bank card transactions between U.S. cardholders and foreign businesses and between foreign cardholders and U.S. businesses.

(b) Entities required to report will be contacted individually by BEA. Entities not contacted by BEA have no reporting responsibilities.

What To Report: The survey collects information on the credit, debit, charge, automated teller machine (ATM), and point of sale transactions of U.S. persons traveling abroad and foreign persons traveling in the United States.

How To Report: Reports can be filed using BEA's electronic reporting system at *www.bea.gov/efile.* Copies of the survey forms and instructions, which contain complete information on reporting procedures and definitions, can be downloaded from the BEA Web site given above. Form BE–150 inquiries can be made by phone to BEA at (202) 606–5588 or by sending an email to *be150help@bea.gov.*

When To Report: Reports are due to BEA 45 days after the end of each calendar quarter.

Paperwork Reduction Act Notice

This data collection has been approved by the Office of Management and Budget (OMB) in accordance with the Paperwork Reduction Act and assigned control number 0608–0072. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid control number assigned by OMB. Public reporting burden for this collection of information is estimated to average 16 hours per response. Additional information regarding this burden estimate may be viewed at *www.reginfo.gov;* under the Information Collection Review tab, click on "Search" and use the above OMB control number to search for the current survey instrument. Send comments regarding this burden estimate to Director, Bureau of Economic Analysis (BE–1), U.S. Department of Commerce, Washington, DC 20230; and to the Office of Management and Budget, Paperwork Reduction Project 0608–0072, Washington, DC 20503.

Authority: 22 U.S.C. 3101–3108.

Brian C. Moyer,
Director, Bureau of Economic Analysis.

[FR Doc. 2016–07474 Filed 4–1–16; 8:45 am]

BILLING CODE 3510–06–P

DEPARTMENT OF COMMERCE

Bureau of Economic Analysis

[Docket No. 160304198–6198–01]

XRIN 0691–XC046

BE–45: Quarterly Survey of Insurance Transactions by U.S. Insurance Companies With Foreign Persons

AGENCY: Bureau of Economic Analysis, Commerce.

ACTION: Notice of reporting requirements.

SUMMARY: By this Notice, the Bureau of Economic Analysis (BEA), Department of Commerce, is informing the public that it is conducting the mandatory survey titled Quarterly Survey of Insurance Transactions by U.S. Insurance Companies with Foreign Persons (BE–45). This survey is authorized by the International Investment and Trade in Services Survey Act.

SUPPLEMENTARY INFORMATION: This Notice constitutes legal notification to all U.S. persons (defined below) who meet the reporting requirements set forth in this Notice that they must respond to, and comply with, the BE–45. Reports are due 60 days after the end of each calendar quarter, or 90 days after the close of the calendar year. This notice is being issued in conformance with the rule BEA issued in 2012 (77 FR 24373) establishing guidelines for collecting data on international trade in services and direct investment through notices, rather than through rulemaking. Additional information about BEA's collection of data on international trade in services and direct investment can be found in the 2012 rule, the International Investment and Trade in Services Survey Act (22 U.S.C. 3101 *et seq.*), and 15 CFR part 801. Survey data on international trade in services and direct investment that are not collected pursuant to the 2012 rule are described separately in 15 CFR part 801. The BE–45 survey form and instructions are available on the BEA Web site at *www.bea.gov/ssb.*

Definitions

(a) *Person* means any individual, branch, partnership, associated group, association, estate, trust, corporation, or other organization (whether or not organized under the laws of any State), and any government (including a foreign government, the U.S. Government, a State or local government, and any agency, corporation, financial institution, or other entity or instrumentality thereof, including a government-sponsored agency).

(b) *U.S. person* means any person resident in the United States or subject to the jurisdiction of the United States.

(c) *United States,* when used in a geographic sense, means the 50 States, the District of Columbia, the Commonwealth of Puerto Rico, and all territories and possessions of the United States.

(d) *Foreign person* means any person resident outside the United States or subject to the jurisdiction of a country other than the United States.

Reporting

Notice of specific reporting requirements, including who is to report, the information to be reported, the manner of reporting, and the time and place of filing reports, will be mailed to those required to complete this survey.

Who Must Report: (a) Reports are required from U.S. persons whose covered transactions exceeded $8 million (positive or negative) during the prior calendar year, or are expected to exceed that amount during the current calendar year.

(b) Entities required to report will be contacted individually by BEA. Entities not contacted by BEA have no reporting responsibilities.

What To Report: The survey collects information on cross-border insurance transactions between U.S. insurance companies and foreign persons.

How To Report: Reports can be filed using BEA's electronic reporting system at *www.bea.gov/efile.* Copies of the survey forms and instructions, which contain complete information on reporting procedures and definitions, can be downloaded from the BEA Web site given above. Form BE–45 inquiries can be made by phone to BEA at (202) 606–5588 or by sending an email to *be45help@bea.gov.*

When To Report: Reports are due to BEA 60 days after the end of each calendar quarter, or 90 days after the close of the calendar year.

Paperwork Reduction Act Notice

This data collection has been approved by the Office of Management and Budget (OMB) in accordance with the Paperwork Reduction Act and assigned control number 0608–0066. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid control number assigned by OMB. Public reporting burden for this collection of information is estimated to average 8 hours per response. Additional information regarding this burden estimate may be viewed at *www.reginfo.gov;* under the Information Collection Review tab, click on "Search" and use the above OMB control number to search for the current survey instrument. Send comments regarding this burden estimate to Director, Bureau of Economic Analysis (BE–1), U.S. Department of Commerce, Washington, DC 20230; and to the Office of Management and Budget, Paperwork Reduction Project 0608–0066, Washington, DC 20503.

Authority: 22 U.S.C. 3101–3108.

Brian C. Moyer,
Director, Bureau of Economic Analysis.

[FR Doc. 2016–07469 Filed 4–1–16; 8:45 am]

BILLING CODE 3510–06–P

DEPARTMENT OF COMMERCE

Bureau of Economic Analysis

[Docket No. 160303193–6193–01]

XRIN: 0691–XC042

BE–29: Annual Survey of Foreign Ocean Carriers' Expenses in the United States

AGENCY: Bureau of Economic Analysis, Commerce.

ACTION: Notice of reporting requirements.

SUMMARY: By this Notice, the Bureau of Economic Analysis (BEA), Department of Commerce, is informing the public that it is conducting the mandatory survey titled Annual Survey of Foreign Ocean Carriers' Expenses in the United States (BE–29). This survey is authorized by the International Investment and Trade in Services Survey Act.

SUPPLEMENTARY INFORMATION: This Notice constitutes legal notification to all U.S. persons (defined below) who meet the reporting requirements set forth in this Notice that they must respond to, and comply with, the BE–29. Reports are due 90 days after the end of each calendar year. This notice is being issued in conformance with the rule BEA issued in 2012 (77 FR 24373) establishing guidelines for collecting data on international trade in services and direct investment through notices, rather than through rulemaking. Additional information about BEA's collection of data on international trade in services and direct investment can be found in the 2012 rule, the International Investment and Trade in Services Survey Act (22 U.S.C. 3101 *et seq.*), and 15 CFR part 801. Survey data on international trade in services and direct investment that are not collected pursuant to the 2012 rule are described separately in 15 CFR part 801. The BE–29 survey form and instructions are available on the BEA Web site at *www.bea.gov/ssb.*

Definitions

(a) *Person* means any individual, branch, partnership, associated group, association, estate, trust, corporation, or other organization (whether or not organized under the laws of any State), and any government (including a foreign government, the U.S. Government, a State or local government, and any agency, corporation, financial institution, or other entity or instrumentality thereof, including a government-sponsored agency).

(b) *U.S. person* means any person resident in the United States or subject to the jurisdiction of the United States.

(c) *United States,* when used in a geographic sense, means the 50 States, the District of Columbia, the Commonwealth of Puerto Rico, and all territories and possessions of the United States.

(d) *Foreign person* means any person resident outside the United States or subject to the jurisdiction of a country other than the United States.

(e) *Carriers* means owners or operators of dry cargo, passenger (including cruise and combination) and tanker vessels, including very large crude carriers (VLCCs), calling at U.S. ports.

(f) *Foreign Carriers* means those carriers whose residence is outside the United States, including those who own or operate their own chartered (U.S.-flag or foreign-flag) vessels. They also include foreign subsidiaries of U.S. companies operating their own or chartered vessels as carriers for their own accounts.

Reporting

Notice of specific reporting requirements, including who is to report, the information to be reported, the manner of reporting, and the time and place of filing reports, will be mailed to those required to complete this survey.

Who Must Report: (a) Reports are required from U.S. agents of foreign carriers who handle 40 or more port calls in the reporting period by foreign ocean vessels, or have total annual covered expenses for all foreign ocean vessels handled by the U.S. agent of $250,000 or more.

(b) Entities required to report will be contacted individually by BEA. Entities not contacted by BEA have no reporting responsibilities.

What to Report: This survey collects information on foreign ocean carriers' expenses in the United States.

How to Report: Reports can be filed using BEA's electronic reporting system at *www.bea.gov/efile.* Copies of the survey forms and instructions, which contain complete information on reporting procedures and definitions, can be downloaded from the BEA Web site given above. Form BE–29 inquiries can be made by phone to BEA at (202) 606–5588 or by sending an email to *be29help@bea.gov.*

When To Report: Reports are due to BEA 90 days after the end of each calendar year.

Paperwork Reduction Act Notice

This data collection has been approved by the Office of Management and Budget (OMB) in accordance with the Paperwork Reduction Act and assigned control number 0608–0012. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid control number assigned by OMB. Public reporting burden for this collection of information is estimated to average 3 hours per response. Additional information regarding this burden estimate may be viewed at *www.reginfo.gov;* under the Information Collection Review tab, click on "Search" and use the above OMB control number to search for the current survey instrument. Send comments regarding this burden estimate to Director, Bureau of Economic Analysis (BE–1), U.S. Department of Commerce, Washington, DC 20230; and to the Office of Management and Budget, Paperwork Reduction Project 0608–0012, Washington, DC 20503.

Authority: 22 U.S.C. 3101–3108.

Brian C. Moyer,

Director, Bureau of Economic Analysis.

[FR Doc. 2016–07462 Filed 4–1–16; 8:45 am]

BILLING CODE 3510–06–P

DEPARTMENT OF COMMERCE

Bureau of Economic Analysis

[Docket No. 160303190–6190–01]

XRIN 0691–XC040

BE–9: Quarterly Survey of Foreign Airline Operators' Revenues and Expenses in the United States

AGENCY: Bureau of Economic Analysis, Commerce.

ACTION: Notice of reporting requirements.

SUMMARY: By this Notice, the Bureau of Economic Analysis (BEA), Department of Commerce, is informing the public that it is conducting the mandatory survey titled Quarterly Survey of Foreign Airline Operators' Revenues and Expenses in the United States (BE–9). This survey is authorized by the International Investment and Trade in Services Survey Act.

SUPPLEMENTARY INFORMATION: This Notice constitutes legal notification to all U.S. persons (defined below) who meet the reporting requirements set forth in this Notice that they must respond to, and comply with, the BE–9. Reports are due 45 days after the end of each calendar quarter. This notice is being issued in conformance with the rule BEA issued in 2012 (77 FR 24373) establishing guidelines for collecting data on international trade in services and direct investment through notices, rather than through rulemaking. Additional information about BEA's collection of data on international trade in services and direct investment can be found in the 2012 rule, the International Investment and Trade in Services Survey Act (22 U.S.C. 3101 *et seq.*), and 15 CFR part 801. Survey data on international trade in services and direct investment that are not collected pursuant to the 2012 rule are described separately in 15 CFR part 801. The BE–9 survey form and instructions are available on the BEA Web site at *www.bea.gov/ssb.*

Definitions

(a) *Person* means any individual, branch, partnership, associated group, association, estate, trust, corporation, or other organization (whether or not organized under the laws of any State), and any government (including a foreign government, the U.S. Government, a State or local government, and any agency, corporation, financial institution, or other entity or instrumentality thereof, including a government-sponsored agency).

(b) *U.S. person* means any person resident in the United States or subject to the jurisdiction of the United States.

(c) *United States,* when used in a geographic sense, means the 50 States, the District of Columbia, the Commonwealth of Puerto Rico, and all territories and possessions of the United States.

(d) *Foreign person* means any person resident outside the United States or subject to the jurisdiction of a country other than the United States.

Reporting

Notice of specific reporting requirements, including who is to report, the information to be reported, the manner of reporting, and the time and place of filing reports, will be mailed to those required to complete this survey.

Who Must Report: (a) Reports are required from U.S. offices, agents, or other representatives of foreign airline operators that transport freight, express, and passengers to or from the United States and whose total covered revenues or total covered expenses were $5,000,000 or more during the previous year, or are expected to be $5,000,000 or more during the current year.

(b) Entities required to report will be contacted individually by BEA. Entities not contacted by BEA have no reporting responsibilities.

What To Report: The survey collects information on foreign airline operators' revenues and expenses in the United States.

How To Report: Reports can be filed using BEA's electronic reporting system at *www.bea.gov/efile.* Copies of the survey forms and instructions, which contain complete information on reporting procedures and definitions, can be downloaded from the BEA Web site given above. Form BE–9 inquiries can be made by phone to BEA at (202) 606–5588 or by sending an email to *be9help@bea.gov.*

When To Report: Reports are due to BEA 45 days after the end of each calendar quarter.

Paperwork Reduction Act Notice

This data collection has been approved by the Office of Management and Budget (OMB) in accordance with the Paperwork Reduction Act and assigned control number 0608–0068. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid control number assigned by OMB. Public reporting burden for this collection of information is estimated to average 6 hours per response. Additional information regarding this burden estimate may be viewed at *www.reginfo.gov;* under the Information Collection Review tab, click on "Search" and use the above OMB control number to search for the current survey instrument. Send comments regarding this burden estimate to Director, Bureau of Economic Analysis (BE–1), U.S. Department of Commerce, Washington, DC 20230; and to the Office of Management and Budget, Paperwork Reduction Project 0608–0068, Washington, DC 20503.

Authority: 22 U.S.C. 3101–3108.

Brian C. Moyer,

Director, Bureau of Economic Analysis.

[FR Doc. 2016–07464 Filed 4–1–16; 8:45 am]

BILLING CODE 3510–06–P

DEPARTMENT OF COMMERCE

Bureau of Economic Analysis

[Docket No. 160303191–6191–01]

XRIN 0691–XC041

BE–11: Annual Survey of U.S. Direct Investment Abroad

AGENCY: Bureau of Economic Analysis, Commerce.

ACTION: Notice of reporting requirements.

SUMMARY: By this Notice, the Bureau of Economic Analysis (BEA), Department of Commerce, is informing the public that it is conducting the mandatory survey titled Annual Survey of U.S. Direct Investment Abroad (BE–11). This survey is authorized by the International Investment and Trade in Services Survey Act.

SUPPLEMENTARY INFORMATION: This Notice constitutes legal notification to all U.S. persons (defined below) who meet the reporting requirements set forth in this Notice that they must respond to, and comply with, the BE–11. A completed report covering a reporting company's fiscal year ending during the previous calendar year is due by May 31. This notice is being issued in conformance with the rule BEA issued in 2012 (77 FR 24373) establishing guidelines for collecting data on international trade in services and direct investment through notices, rather than through rulemaking. Additional information about BEA's collection of data on international trade in services and direct investment can be found in the 2012 rule, the International Investment and Trade in Services Survey Act (22 U.S.C. 3101 *et seq.*), and 15 CFR part 801. Survey data on international trade in services and direct investment that are not collected pursuant to the 2012 rule are described separately in 15 CFR part 801. The BE–11 survey forms and instructions are available on the BEA Web site at *www.bea.gov/dia.*

Definitions

(a) *United States,* when used in a geographic sense, means the 50 States, the District of Columbia, the Commonwealth of Puerto Rico, and all territories and possessions of the United States.

(b) *Foreign,* when used in a geographic sense, means that which is situated outside the United States or which belongs to or is characteristic of a country other than the United States.

(c) *Person* means any individual, branch, partnership, associated group, association, estate, trust, corporation, or other organization (whether or not organized under the laws of any State), and any government (including a foreign government, the U.S. Government, a State or local government, and any agency, corporation, financial institution, or other entity or instrumentality thereof, including a government-sponsored agency).

(d) *Business enterprise* means any organization, association, branch, or venture that exists for profit-making purposes or to otherwise secure economic advantage, and any ownership of any real estate.

Reporting

Notice of specific reporting requirements, including who is to report, the information to be reported, the manner of reporting, and the time and place of filing reports, will be mailed to those required to complete this survey.

Who Must Report: (a) Reports are required from each U.S. person that has a direct and/or indirect ownership interest of at least 10 percent of the voting stock in an incorporated foreign business enterprise, or an equivalent interest in an unincorporated foreign business enterprise, and that meets the additional conditions detailed in Form BE–11.

(b) Entities required to report will be contacted individually by BEA. Entities not contacted by BEA have no reporting responsibilities.

What To Report: The survey collects information on the operations of U.S. parent companies and their foreign affiliates.

How To Report: Reports can be filed using BEA's electronic reporting system at *www.bea.gov/efile.* Copies of the survey forms and instructions, which contain complete information on reporting procedures and definitions, can be downloaded from the BEA Web site given above. Form BE–11 inquiries can be made by phone to (202) 606–5566 or by sending an email to *be10/11@bea.gov.*

When To Report: A completed report covering a reporting company's fiscal year ending during the previous calendar year is due by May 31.

Paperwork Reduction Act Notice

This data collection has been approved by the Office of Management and Budget (OMB) in accordance with the Paperwork Reduction Act and assigned control number 0608–0053. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid control number assigned by OMB. Public reporting burden for this collection of information is estimated to average 138 hours per response. Additional information regarding this burden estimate may be viewed at *www.reginfo.gov;* under the Information Collection Review tab, click on "Search" and use the above OMB control number to search for the current survey instrument. Send comments regarding this burden estimate to Director, Bureau of Economic Analysis (BE–1), U.S. Department of Commerce, Washington, DC 20230; and to the Office of Management and Budget, Paperwork Reduction Project 0608–0053, Washington, DC 20503.

Authority: 22 U.S.C. 3101–3108.

Brian C. Moyer,
Director, Bureau of Economic Analysis.

[FR Doc. 2016–07463 Filed 4–1–16; 8:45 am]
BILLING CODE 3510–06–P

DEPARTMENT OF COMMERCE

Bureau of Economic Analysis

[Docket No. 160304200–6200–01]

XRIN: 0691–XC048

BE–185: Quarterly Survey of Financial Services Transactions Between U.S. Financial Services Providers and Foreign Persons

AGENCY: Bureau of Economic Analysis, Commerce.

ACTION: Notice of reporting requirements.

SUMMARY: By this Notice, the Bureau of Economic Analysis (BEA), Department of Commerce, is informing the public that it is conducting the mandatory survey titled Quarterly Survey of Financial Services Transactions between U.S. Financial Services Providers and Foreign Persons (BE–185). This survey is authorized by the International Investment and Trade in Services Survey Act and by Section 5408 of the Omnibus Trade and Competitiveness Act of 1988.

SUPPLEMENTARY INFORMATION: This Notice constitutes legal notification to all U.S. persons (defined below) who meet the reporting requirements set forth in this Notice that they must respond to, and comply with, the BE–185. Reports are due 45 days after the end of each fiscal quarter, except for the final quarter of the U.S. person's fiscal year when reports must be filed within 90 days. This notice is being issued in conformance with the rule BEA issued in 2012 (77 FR 24373) establishing guidelines for collecting data on international trade in services and direct investment through notices, rather than through rulemaking. Additional information about BEA's collection of data on international trade in services and direct investment can be found in the 2012 rule, the International Investment and Trade in Services Survey Act (22 U.S.C. 3101 *et seq.*), and 15 CFR part 801. Survey data on international trade in services and direct investment that are not collected pursuant to the 2012 rule are described separately in 15 CFR part 801. The BE–185 survey form and instructions are available on the BEA Web site at *www.bea.gov/ssb.*

Definitions

(a) *Person* means any individual, branch, partnership, associated group, association, estate, trust, corporation, or other organization (whether or not organized under the laws of any State), and any government (including a foreign government, the U.S. Government, a State or local government, and any agency, corporation, financial institution, or other entity or instrumentality thereof, including a government-sponsored agency).

(b) *U.S. person* means any person resident in the United States or subject to the jurisdiction of the United States.

(c) *United States,* when used in a geographic sense, means the 50 States, the District of Columbia, the Commonwealth of Puerto Rico, and all territories and possessions of the United States.

(d) *Foreign person* means any person resident outside the United States or subject to the jurisdiction of a country other than the United States.

Reporting

Who Must Report: (a) Reports are required from each U.S. person who had sales of covered financial services to foreign persons that exceeded $20 million during the previous fiscal year, or are expected to exceed that amount during the current fiscal year; or had purchases of covered financial services from foreign persons that exceeded $15 million during the previous fiscal year, or are expected to exceed that amount during the current fiscal year. Because the thresholds are applied separately to sales and purchases, the reporting requirements may apply only to sales, only to purchases, or to both sales and purchases.

(b) Entities required to report will be contacted individually by BEA. Entities not contacted by BEA have no reporting responsibilities.

What To Report: The survey collects information on transactions in the covered financial services between U.S. financial services providers and foreign persons.

How To Report: Reports can be filed using BEA's electronic reporting system at *www.bea.gov/efile.* Copies of the survey forms and instructions, which contain complete information on reporting procedures and definitions, can be downloaded from the BEA Web site given above. Form BE–185 inquiries can be made by phone to BEA at (202) 606–5588 or by sending an email to *be185help@bea.gov.*

When To Report: Reports are due to BEA 45 days after the end of each fiscal quarter, except for the final quarter of the reporter's fiscal year when reports must be filed within 90 days.

Paperwork Reduction Act Notice

This data collection has been approved by the Office of Management and Budget (OMB) in accordance with the Paperwork Reduction Act and assigned control number 0608–0065. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid control number assigned by OMB. Public reporting burden for this collection of information is estimated to average 10 hours per response. Additional information regarding this burden estimate may be viewed at *www.reginfo.gov;* under the Information Collection Review tab, click on "Search" and use the above OMB control number to search for the current survey instrument. Send comments regarding this burden estimate to Director, Bureau of Economic Analysis (BE–1), U.S. Department of Commerce, Washington, DC 20230; and to the

Office of Management and Budget, Paperwork Reduction Project 0608–0065, Washington, DC 20503.

Authority: 22 U.S.C. 3101–3108 and 15 U.S.C. 4908(b).

Brian C. Moyer,
Director, Bureau of Economic Analysis.

[FR Doc. 2016–07473 Filed 4–1–16; 8:45 am]

BILLING CODE 3510–06–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–909]

Certain Steel Nails From the People's Republic of China: Final Results of Antidumping Duty Administrative Review; 2013–2014

Correction

In notice document 2016–05994 beginning on page 14092 in the issue of Wednesday, March 16, 2016, make the following correction:

Due to numerous errors, the table on page 14094 is being reprinted in its entirety to read as follows:

Exporter	Weighted-average margin (percent)
Stanley	11.95
Chiieh Yung Metal Ind. Corp.	11.95
Dezhou Hualude Hardware Products Co., Ltd.	11.95
Hebei Cangzhou New Century Foreign Trade Co., Ltd.	11.95
Nanjing Caiqing Hardware Co., Ltd.	11.95
Qingdao D&L Group Ltd.	11.95
SDC International Aust. PTY. Ltd.	11.95
Shandong Dinglong Import & Export Co., Ltd	11.95
Shanghai Curvet Hardware Products Co., Ltd.	11.95
Shanghai Yueda Nails Industry Co., Ltd	11.95
Shanxi Hairui Trade Co., Ltd.	11.95
Shanxi Pioneer Hardware Industrial Co., Ltd.	11.95
Shanxi Tianli Industries Co., Ltd.	11.95
S-Mart (Tianjin) Technology Development Co., Ltd.	11.95
Suntec Industries Co., Ltd.	11.95
Tianjin Jinchi Metal Products Co., Ltd.	11.95
Tianjin Jinghai County Hongli Industry & Business Co., Ltd.	11.95
Tianjin Lianda Group Co., Ltd.	11.95
Tianjin Universal Machinery Imp. & Exp. Corporation	11.95
Tianjin Zhonglian Metals Ware Co., Ltd.	11.95
Xi'an Metals & Minerals Import & Export Co., Ltd.	11.95

[FR Doc. C1–2016–05994 Filed 4–1–16; 8:45 am]

BILLING CODE 1505–01–D

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XE548

New England Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of public meeting.

SUMMARY: The New England Fishery Management Council (Council, NEFMC) will hold a three-day meeting to consider actions affecting New England fisheries in the exclusive economic zone (EEZ).

DATES: The meeting will be held on Tuesday, Wednesday and Thursday, April 19, 20, and 21, 2016. It will start at 9 a.m. on April 19, and at 8:30 a.m. on both April 20 and 21.

ADDRESSES: The meeting will be held at the Mystic Hilton Hotel, 20 Coogan Boulevard, Mystic, CT 06355; telephone: (860) 572–0731, or online at *http://hiltonmystic.com/.*

Council address: New England Fishery Management Council, 50 Water Street, Mill 2, Newburyport, MA 01950; telephone: (978) 465–0492.

FOR FURTHER INFORMATION CONTACT: Thomas A. Nies, Executive Director, New England Fishery Management Council; telephone: (978) 465–0492, ext. 113.

SUPPLEMENTARY INFORMATION:

Agenda

Tuesday, April 19, 2016

After introductions and any announcements, the Council meeting will open with brief reports from the NEFMC Chairman and Executive Director, the NOAA Regional Administrator for the Greater Atlantic Region (GAR), Northeast Fisheries Science Center and Mid-Atlantic Fishery Management Council liaisons, NOAA General Counsel and Office of Law Enforcement representatives, and staff from the Atlantic States Marine Fisheries Commission and the U.S Coast Guard. Following these reports, the Council will receive two others from representatives of the Northeast Fisheries Science Center; the first is on the status of the Northeast continental shelf ecosystem; and a second will cover scientific efforts to assess the vulnerability of fish stocks to climate change. Next, the NEFMC's Ecosystem-Based Fisheries Management Committee will provide an update on its progress to develop a working example of a fisheries ecosystem plan. After a lunch break, the Council will discuss and prepare comments on NOAA Fisheries draft National Bycatch Strategy and the agency's proposed draft Standardized Bycatch Reporting Methodology.

Wednesday, April 20, 2016

The second day of the meeting will begin with an overview of progress to develop Amendment 22 to the Northeast Multispecies Fishery Management Plan.

The Council is considering a limited access program for the whiting/hake fishery via this action. A public comment period is then scheduled during which any member of the public may bring issues forward that relate to Council business but are not included on the published agenda for this meeting. During this morning session, the Atlantic Herring Committee will provide a briefing on progress on Amendment 8 to the Herring FMP, an action that would address: (1) Localized depletion; and (2) long-term harvest strategies for Atlantic herring, including an acceptable biological catch (ABC) control rule that explicitly accounts for herring's role in the ecosystem. The Committee report will also include discussion of plans for a workshop on a management strategy evaluation of the herring ABC control rule and a request that the Council initiate a framework adjustment to revise the Georges Bank haddock catch cap accountability measures. After a lunch break and during a discussion about NOAA's Omnibus Industry-Funded Monitoring Amendment, the Council also will, in cooperation with NOAA, discuss and refine existing alternatives and possibly select preferred alternatives for target levels of monitoring coverage in the Atlantic herring fishery. Approval of the associated draft Environmental Assessment will occur at the NEFMC's June Council meeting. Under the Sea Scallop Committee's agenda item, discussions are planned in which NEFMC members will review results of the Council-sponsored workshop to address concerns about scallop fishing pressure in nearshore areas. They will also review a draft outline and work plan for the five-year performance review of the limited access general category IFQ program and hear information about increased fishing activity in the Northern Gulf of Maine management area. If warranted, the NEFMC may initiate an action at this meeting to address this last topic.

Thursday, April 21, 2016

The final meeting day will begin with a report from the Council's Habitat Committee Chair. After a review of work to date, the committee will ask for Council approval of the Omnibus Deep-Sea Coral Amendment management alternatives for the purpose of further development and analyses. A presentation is then scheduled on the draft Northeast Regional Ocean Plan. The next report will address plans for a peer review (fall 2016) of the in-season discard methodology to be used by NOAA Fisheries. The report will include a discussion of the terms of reference approved by the Northeast Regional Coordinating Committee. Following a mid-day lunch break, and under the auspices of the Groundfish Committee, there will be: a progress report on work to evaluate the groundfish monitoring program, and an update on other groundfish priorities for 2016, including windowpane flounder management measures and improving the process to develop recreational fishery management measures. The Council will adjourn after it addresses any other outstanding business during the afternoon of April 21st.

Although other non-emergency issues not contained in this agenda may come before this Council for discussion, those issues may not be the subject of formal action during this meeting. Council action will be restricted to those issues specifically listed in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Act, provided that the public has been notified of the Council's intent to take final action to address the emergency.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Thomas A. Nies (see **ADDRESSES**) at least 5 days prior to the meeting date.

Dated: March 29, 2016.

Tracey L. Thompson,

Acting Deputy Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 2016–07557 Filed 4–1–16; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XE460

Takes of Marine Mammals Incidental to Specified Activities; Sand Quality Study Activities at the Children's Pool Beach, La Jolla, California

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice; proposed Incidental Harassment Authorization (IHA); request for comments.

SUMMARY: NMFS has received an application from the City of San Diego for an IHA to take small numbers of marine mammals, by Level B harassment, incidental to the conduct of sand quality study activities at the Children's Pool Beach in La Jolla, California. Pursuant to the Marine Mammal Protection Act (MMPA), NMFS is requesting comments on its proposal to issue an IHA to the City of San Diego to take, by Level B harassment only, three species of marine mammals during the specified activities.

DATES: Comments and information must be received no later than May 4, 2016.

ADDRESSES: Comments on the IHA application should be addressed to Jolie Harrison, Chief, Permits and Conservation Division, Office of Protected Resources, National Marine Fisheries Service, 1315 East-West Highway, Silver Spring, MD 20910. The mailbox address for providing email comments is *ITP.Youngkin@noaa.gov.* NMFS is not responsible for email comments sent to addresses other than the one provided here. Comments sent via email, including all attachments, must not exceed a 25-megabyte size.

All comments received are a part of the public record and will generally be posted to *http://www.nmfs.noaa.gov/pr/permits/incidental/* without change. All Personal Identifying Information (for example, name, address, etc.) voluntarily submitted by the commenter may be publicly accessible. Do not submit Confidential Business Information or otherwise sensitive or protected information.

An electronic copy of the IHA application containing a list of the references used in this document may be obtained by visiting the Internet at: *http://www.nmfs.noaa.gov/pr/permits/incidental/.* In case of problems accessing these documents, please call the contact listed below. Documents cited in this notice, including the IHA application, may also be viewed, by appointment, during regular business hours, at the aforementioned address.

FOR FURTHER INFORMATION CONTACT: Dale Youngkin, Office of Protected Resources, NMFS, 301–427–8401.

SUPPLEMENTARY INFORMATION:

Background

Sections 101(a)(5)(A) and (D) of the MMPA (16 U.S.C. 1361 *et seq.*), direct the Secretary of Commerce (Secretary) to allow, upon request, the incidental, but not intentional, taking of small numbers of marine mammals, by United States citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region if certain findings are made and either regulations are issued or, if the taking is limited to harassment, a notice of a proposed authorization is provided to the public for review.

Authorization for the incidental takings shall be granted if NMFS finds that the taking will have a negligible impact on the species or stock(s), will not have an unmitigable adverse impact on the availability of the species or stock(s) for subsistence uses (where relevant), and if the permissible methods of taking and requirements pertaining to the mitigation, monitoring, and reporting of such takings are set forth. NMFS has defined "negligible impact" in 50 CFR 216.103 as ". . . an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival."

Section 101(a)(5)(D) of the MMPA established an expedited process by which citizens of the United States can apply for an authorization to incidentally take small numbers of marine mammals by harassment. Section 101(a)(5)(D) of the MMPA establishes a 45-day time limit for NMFS's review of an application followed by a 30-day public notice and comment period on any proposed authorizations for the incidental harassment of small numbers of marine mammals. Within 45 days of the close of the public comment period, NMFS must either issue or deny the authorization.

Except with respect to certain activities not pertinent here, the MMPA defines "harassment" as: Any act of pursuit, torment, or annoyance which (i) has the potential to injure a marine mammal or marine mammal stock in the wild [Level A harassment]; or (ii) has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering [Level B harassment].

Summary of Request

On December 14, 2015, NMFS received an application from the City of San Diego, Transportation & Storm Water Department, Storm Water Division, requesting an IHA for the taking of marine mammals incidental to the conduct of sand quality study activities. NMFS determined that the IHA application was adequate and complete on February 25, 2016.

The City of San Diego would undertake the proposed sand quality sampling activities between June 1, 2016 and December 14, 2016 at the Children's Pool Beach in La Jolla, California. Visual stimuli due to the presence of technicians on the beach and their sand sample collection activities during the study has the potential to result in the take of marine mammals through behavioral disturbance. The requested IHA would authorize the take, by Level B (behavioral) harassment, of small numbers of Pacific harbor seals (*Phoca vitulina richardii*), California sea lions (*Zalophus californianus*), and northern elephant seals (*Mirounga angustirostris*) incidental to sand quality sampling activities of the Children's Pool Beach at La Jolla, CA. Additional information on the sand quality sampling activities at the Children's Pool Beach is contained in the IHA application, which is available electronically (see **ADDRESSES**).

Description of the Proposed Specified Activity

Overview

The City of San Diego plans to conduct a sand quality study at the Children's Pool Beach in La Jolla, CA in order to fulfill a special condition that was part of a permit issued by the California Coastal Commission (Commission). The special provision required a feasibility study to analyze the sand quality, and methods for improving sand quality, at Children's Pool Beach. Children's Pool Beach is currently listed on the Clean Water Act Section 303(d) list as impaired for Fecal Indicator Bacteria (FIB). Additionally, researchers have identified pinniped molting and excrement as a potential source of mercury to the environment (McHuron, Harvey et al. 2014, Cossaboon, Ganguli et al. 2015). The sand quality study will analyze the current extent and magnitude of FIB and mercury contamination in the beach sand at Children's Pool Beach, and will assess several possible variable effects including tidal cycles, wave regimes, sand depth, and seasonal variability during the effective dates of the IHA.

The California Coastal Commission's permit certified the City's request to amend its Land Use Plan. Specifically, the City's amendment included revisions to allow seasonal closure at Children's Pool Beach during the Pacific harbor seal pupping season, generally from December 15 to May 15 of every year. The amendment applies only to Children's Pool Beach, and is intended to allow special protection of the harbor seals at Children's Pool Beach during the vulnerable months of their pupping season.

The sand quality sampling activities would involve teams of two to three people collecting sand samples for approximately four hours along transects parallel to the shoreline between the water line and the seawall/bluff railing. Sixteen sampling events are proposed for the sand quality study period between June 1 and December 14, 2016. Sand sample collection would involve grab samples of surface layer sand (surface up to 20 cm of sand to be collected with a sterilized spoon). A small subset of samples per event would be collected from the subsurface via narrow plastic cores (approximately 5 centimeters [cm] by 60 cm) driven into the sand by hand to the extent possible, and then sunk to the desired depth with a small rubber mallet. Approximately 21 samples would be collected per event. Visual stimuli due to the presence of researchers on the beach collecting sand samples would potentially result in behavioral disturbance of pinnipeds hauled out on the beach, which would equate to a take under the MMPA.

Proposed Dates and Duration

The City of San Diego is planning to begin the project at the Children's Pool in La Jolla, CA after the beach is opened to the public in May, with completion of the sand sampling activities to be completed prior to closure of the beach to the public in December, 2016. The City of San Diego and NMFS are requiring a moratorium on all sand sampling activities during harbor seal pupping and weaning (*i.e.,* December 15th to May 15th). A moratorium on sampling activities would also be required for an additional two weeks prior to initiating the sand collection activities in order to accommodate late-weaning pups. Therefore, work on this project would only be performed between June 1st and December 14th of 2016.

Proposed sand sampling activities would occur during daylight hours only, as stipulated in the IHA application. In addition, prior to sand sampling events, the beach would be surveyed for the presence of northern fur seals and/or Guadalupe fur seals. If either of these species are observed hauled out or in the water at Children's Pool Beach, sand sampling would not commence. This precaution is included due to the unusually high number of strandings of fur seals along the entire California coast beginning in January, 2015, which has resulted in the declaration of an Unusual Mortality Event (UME) for Guadalupe fur seal (*http://www.nmfs.noaa.gov/pr/health/mmume/guadalupefurseals2015.html*). In addition, an UME has been declared, and has been ongoing since 2013, for California sea lion pups and yearling due to elevated strandings of pups in Southern California (*http://www.nmfs.noaa.gov/pr/health/mmume/*

californiasealions2013.htm). While there have been relatively high numbers of strandings of Guadalupe fur seals coast-wide in California, the presence of this species in California, and at Children's Pool Beach in particular, would be considered extremely rare due to the fact that they prefer isolated rocky haul out sites (Riedman, 1990). As the presence of fur seals at this location would be such a rare event, it is likely that the animal would be sick or injured if it were to be present. Therefore, sand sampling activities would not be conducted and coordination with the stranding network and/or a period of observation would commence, as described in further detail below. Take of fur seals would not be authorized under this IHA.

Proposed Specific Geographic Region

The La Jolla Children's Pool Beach is located at 850 Coast Boulevard, La Jolla, CA 92037 (32°50′51.18″ North, 117°16′41.94″ West). All sand quality sampling events will take place at Children's Pool Beach. The locations of the beach and the study area can be found in the City of San Diego's IHA application.

Detailed Description of the Proposed Specified Activities

The Children's Pool was created in 1931 by building a breakwater wall which created a protected pool for swimming. Although partially filled with sand, the Children's Pool still has open water for swimming and a beach for sunbathing and beachcombing. The Children's Pool and nearby shore areas (*i.e.,* shoreline, beaches, and reefs of La Jolla) are used by swimmers, sunbathers, SCUBA divers and snorkelers, shore/surf fishermen, school classes, tide pool explorers, kayakers, surfers, boogie and skim boarders, seal, sea lion, bird and nature watchers, and for other activities by the general public. As such, Children's Pool Beach is a highly disturbed urban environment, and seals have been documented to respond less sensitively to stimuli compared to seals at other sites (Hanan, 2004, Hanan & Associates 2011; Hanan and Hanan 2014; Hahn 2010). Per Dr. Doyle Hanan, who has a long history of work with seals at this location, harbor seals hauled out at Children's Pool Beach generally are habituated to the environment, and allow approaches of up to two to three meters before showing signs of disturbance.

All sand sampling activities will take place on the sandy beach area. Samples will be collected along transects parallel to the shoreline between the water's edge and the bluff/railing, while ensuring a distance of at least three meters (m) from any pinnipeds on the beach. Samples would consist of grab samples from the surface, with a subset of samples collected approximately 25 to 50 cm below the sand surface by using a hollow tube (approximately 5 cm by 60 cm) driven into the sand by hand and/or with a small rubber mallet with minimal digging.

All sand sampling events will be conducted during daylight hours, and each sampling event would be approximately four hours in duration. Sampling events will be scheduled to the maximum extent practicable to occur during the daily period of lowest haul out occurrence (generally 8:30 a.m.–3:30 p.m.). Because the City of San Diego already closes the Children's Pool Beach during harbor seal pupping season (December 15 through May 15), work on this project will be performed between June 1 and December 14, 2016, and up to 16 sampling events would be conducted during this timeframe. The first six sand sampling events are planned to occur soon after June 1, 2016. The first three sampling events (Phase 1a) are designed to maximize sampling area and to capture critical conditions when FIB may be at their highest concentrations. During each Phase 1a event, three transects parallel to the shoreline at the swash zone, the high-tide line, and the supralittoral zone will be established relative to the seawall railing and three surface sand (SS) FIB samples (top 2 centimeters) will be collected across each of the transects at approximately left, middle, and right beach. In addition, subsurface sand (SbS) FIB samples will also be collected at three of the nine SS sampling location during each event at approximately 25–50 centimeters below the surface. A maximum of 21 FIB samples, including field replicates, will be collected for each Phase 1a monitoring event, for an approximate maximum Phase 1a total of 63 FIB samples. The remaining three sampling events (Phase 1b) will consist of biased sampling based on Phase 1a preliminary findings. The study design for Phase 1b will be finalized in consultation with the City. A maximum of 21 FIB samples, including field replicates, will be collected for each Phase 1b monitoring event, for an approximate maximum Phase 1b total of 63 FIB samples. These early test results can then be compared with additional test results from up to 10 additional sampling events that could be collected during the warmer, high-public-use summer and fall months.

Description of Marine Mammals in the Specified Geographic Area of the Proposed Specified Activity

Information on marine mammal species for which take would be authorized is included below. Further information on the biology and local distribution of these marine mammal species and others in the region can be found in the NMFS Marine Mammal Stock Assessment Reports, which are available online at: *http://www.nmfs.noaa.gov/pr/sars/*.

Three species of pinnipeds are known to occur in the Children's Pool proposed action area and off the Pacific coastline (see Table 1 below). Pacific harbor seals are the most common species likely to be found within the immediate vicinity of the activity area. California sea lions and northern elephant seals may also be found within the immediate vicinity of the activity area, but are more rare occurrences than harbor seals. Northern fur seals and Guadalupe fur seals are even more rarely observed at this location (Northern and Guadalupe fur seals have been seen observed at nearby beaches on rare occasions, and a northern fur seal was observed hauled out at La Jolla Cove, which is less than a mile from Children's Pool, per a personal communication with Dr. Hanan [February 4, 2016], a scientist with extensive knowledge of the area and the species occurring there). Fur seals are not known to haul out in such urban mainland beaches, and their presence would likely be attributed to sickness or injury if they were observed in this location. Therefore, only three species are considered to be potentially exposed to effects of the proposed sand sampling activities, as sand sampling activities would not be conducted if fur seals were present and coordination with the stranding network would commence. A variety of other marine mammal species have on occasion been reported in the coastal waters off southern California. However, none of these species have been reported to occur in the immediate proposed action area of the Children's Pool Beach. Therefore, NMFS does not expect, and does not propose to authorize, incidental take of marine mammal species other than Pacific harbor seals, California sea lions, and northern elephant seals from the proposed specified activities. Table 1 below provides information on these marine mammal species, their habitat, and conservation status in the nearshore area of the general region of the proposed project area.

TABLE 1—THE HABITAT, ABUNDANCE, AND CONSERVATION STATUS OF PACIFIC HARBOR SEALS, CALIFORNIA SEA LIONS, AND NORTHERN ELEPHANT SEALS

Species	Habitat	Occurrence	Range	Best population estimate (minimum) [1]	ESA [2]	MMPA [3]
Pacific harbor seal (*Phoca vitulina richardii*).	Coastal	Common	Coastal temperate to polar regions in Northern Hemisphere.	30,968 (27,348)—California stock.	NL	NC.
Northern elephant seal (*Mirounga angustirostris*).	Coastal, pelagic when not migrating.	Common	Eastern and Central North Pacific—Alaska to Mexico.	179,000 (81,368)—California breeding stock.	NL	NC.
California sea lion (*Zalophus californianus*).	Coastal, shelf	Common	Eastern North Pacific Ocean—Alaska to Mexico.	296,750 (153,337)—U.S. stock.	NL	NC.

NA = Not available or not assessed.
[1] NMFS Marine Mammal Stock Assessment Reports.
[2] U.S. Endangered Species Act: EN = Endangered, T = Threatened, DL = Delisted, and NL = Not listed.
[3] U.S. Marine Mammal Protection Act: D = Depleted, S = Strategic, and NC = Not classified.

Pacific Harbor Seal

Harbor seals are widely distributed in the North Atlantic and North Pacific. Two subspecies exist in the Pacific Ocean: *P.* v. *stejnegeri* in the western North Pacific near Japan, and *P.* v. *richardii* in the eastern North Pacific. The subspecies in the eastern North Pacific Ocean inhabits near-shore coastal and estuarine areas from Baja California, Mexico, to the Pribilof Islands in Alaska. These seals do not make extensive pelagic migrations, but do travel 300 to 500 kilometers (km) (162 to 270 nautical miles [nmi]) on occasion to find food or suitable breeding areas; (Herder 1986, Harvey and Goley 2011). Previous assessments of the status of harbor seals have recognized three stocks along the west coast of the continental U.S.: (1) California, (2) Oregon and Washington outer coast waters, and (3) inland waters of Washington. An unknown number of harbor seals also occur along the west coast of Baja California, at least as far south as Isla Asuncion, which is about 100 miles south of Punta Eugenia. Animals along Baja California are not considered to be a part of the California stock because it is not known if there is any demographically significant movement of harbor seals between California and Mexico and there is no international agreement for joint management of harbor seals. Harbor seal presence at haul-out sites is seasonal with peaks in abundance during their pupping and molting periods. Pupping and molting periods are first observed to the south and progress northward up the coast with time (*e.g.,* January to May near San Diego, April to June in Oregon and Washington) (Jeffries 1984, Huber, Jeffries et al. 2001); Hanan, 2004; Hanan & Associates, 2011).

In California, approximately 400 to 600 harbor seal haul-out sites are distributed along the mainland coast and on offshore islands, including intertidal sandbars and ledges, rocky shores and islets, and beaches (Harvey *et al.,* 1995; Hanan, 1996; Lowry *et al.,* 2008). Preferred haul-out sites are those that are protected from the wind and waves, and allow access to deep water for foraging (Perrin, Würsig et al. 2008). Of the known haul-out sites, 14 locations are rookeries (2 locations have multiple sites, for a total of 17 sites) on or near the mainland of California. The population of harbor seals has grown off the U.S. west coast and has led to new haul-out sites being used in California (Hanan, 1996). Harbor seals are one of the most common and frequently observed marine mammals along the coastal environment.

The Children's Pool area is the only rookery in San Diego County and the only mainland rookery on the U.S. west coast between the border of Mexico and Point Mugu in Ventura County, CA (321.9 km [200 miles]). The number of harbor seals in this area has increased since 1979, and they have been documented giving birth at the Children's Pool since the 1990's (Yochem and Stewart, 1998; Hanan & Associates, 2004). Pacific harbor seals haul-out year-round on beaches and rocks (*i.e.,* breakwater ledge/rocks haul-out area, reef haul-out area, and Casa Beach haul-out area) below the lifeguard tower at Children's Pool. According to Yochem (2005), the Children's Pool beach site is used by harbor seals at all hours of the day and at all tides with the exception of occasional high tide/high swell events in which the entire beach is awash. Harbor seals are documented to give birth on these beaches during December through May (Hanan, 2004; Hanan & Associates, 2011). The official start to pupping season is December 15 at Children's Pool Beach. Females in an advanced stage of pregnancy begin to show up on the Children's Pool beach by late October to early November. Several studies have identified harbor seal behavior and estimated harbor seal numbers including patterns of daily and seasonal area use (Yochem and Stewart, 1998; Hanan & Associates, 2011; Linder, 2011). Males, females, and pups (in season) of all ages and stages of development are observed at the Children's Pool and adjacent areas.

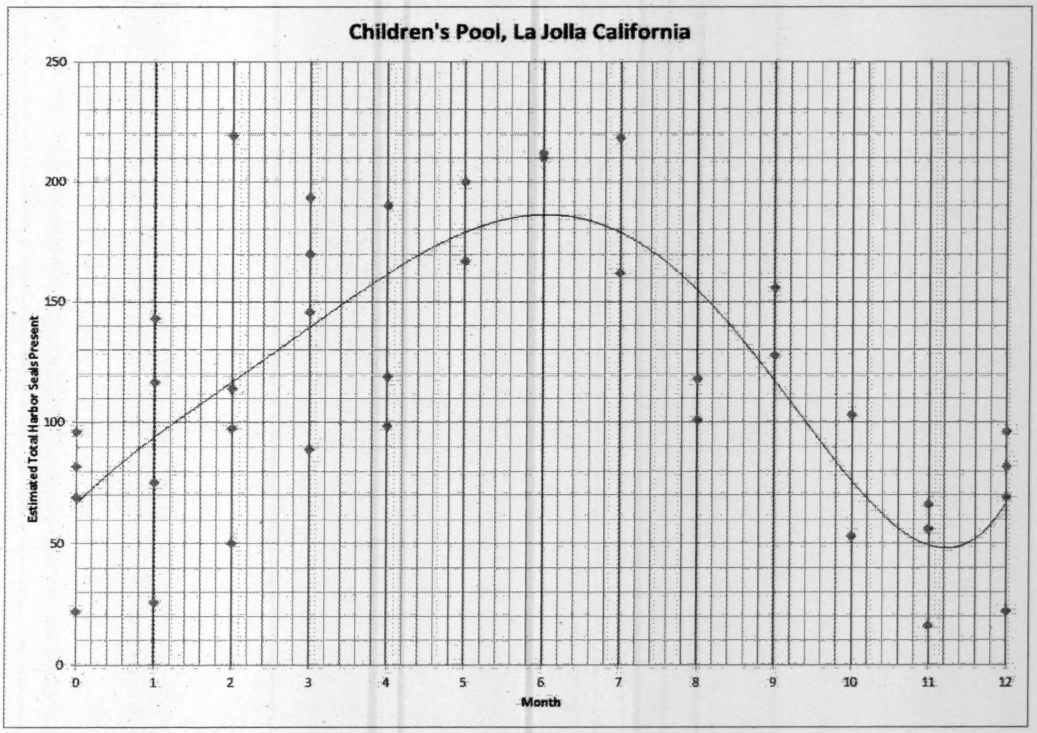
Children's Pool is one of the three known haul-out sites for this species in San Diego County. These animals have been observed in this area moving to/from the Children's Pool, exchanging with the rocky reef directly west of and adjacent to the breakwater and with Seal Rock, which is about 150 m (492 ft) west of the Children's Pool. Harbor seals have also been reported on the sandy beach just southwest of the Children's Pool. At low tide, additional space for hauling-out is available on the rocky reef areas outside the retaining wall and on beaches immediately southward. Haul-out times vary by time of year, from less than an hour to many hours. There have been no foraging studies at this site, but harbor seals have been observed in nearshore waters and kelp beds nearby, including La Jolla Cove.

In southern California, a considerable amount of information is known about the movements and ecology of harbor seals, but population structure in the region is not as well known (Stewart and Yochem, 1994, 2000; Keper *et al.,* 2005; Hanan & Associates, 2011). Linder (2011) suggests that this population moves along the California coast and the beach at Children's Pool is part of a "regional network of interconnected" haul-out and pupping sites. Harbor seals often haul-out in protected bays, inlets, and beaches (Reeves *et al.,* 1992). At and near the Children's Pool, harbor seals haul-out on the sand, rocks, and breakwater base in numbers of 0 to 15 harbor seals to a maximum of about 150 to 250 harbor seals depending on the time of day, season, and weather conditions (Hanan, 2004, Hanan & Associates, 2011; Linder, 2011). Because space is limited behind the breakwater at the Children's Pool, Linder (2011) predicted that it is unlikely that numbers will exceed 250 harbor seals. Based on monitoring from a camera, Western Alliance for Nature (WAN) reported that during the month of May 2013 up to 302 harbor seals were documented resting on the Children's Pool beach at any given time, with additional harbor seals on the rocks and in the water (Wan, personal communication). Almost every day, except for weekends, over 250 individual harbor seals were present on the beach. During the months of September 2012 to January 2013, the average number of harbor seals on the beach varied from 83 to 120 animals before people entered the beach or when people were behind the rope. During this same period, when people were on the beach and/or across the rope, the average number of harbor seals varied from 7 to 27. The City of San Diego observed 12 counts totaling more than 200 and a maximum of 238 animals during the 2014 to 2015 construction window. The weather (*i.e.*, wind and/or rain) and the proximity of humans to the beach likely affect the presence of harbor seals on the beach.

Radio-tagging and photographic studies have revealed that only a portion of seals utilizing a hauling-out site are present at any specific moment or day (Hanan, 1996, 2005; Gilbert *et al.*, 2005; Harvey and Goley, 2011; and Linder, 2011). These radio-tagging studies indicate that harbor seals in Santa Barbara County haul-out about 70 to 90% of the days annually (Hanan, 1996). The City of San Diego expects harbor seals to behave similarly at the Children's Pool. Tagged and branded harbor seals from other haul-out sites have been observed by Dr. Hanan at the Children's Pool. For example, harbor seals with red-stained heads and coats, which are typical of some harbor seals in San Francisco Bay have been observed at Children's Pool, indicating that seals tagged at other locations and haul-out sites visit the site. A few seals have been tagged at the Children's Pool and there are no reports of these tagged animals at other sites (probably because of very low re-sighting efforts and a small sample size [10 individuals radio-tagged]), which may indicate a degree of site-fidelity (Yochem and Stewart, 1998). These studies further indicate that seals are constantly moving along the coast including to/from the offshore islands and that there may be as many as 600 individual harbor seals using Children's Pool during a year, but certainly not all at one time.

The City of San Diego has fitted a polynomial curve to the number of expected harbor seals hauling-out at the Children's Pool by month (see Figure 2 of the IHA application and Figure 1 below) based on counts at the Children's Pool by Hanan (2004), Hanan & Associates (2011), Yochem and Stewart (1998), and the Children's Pool docents (Hanan, 2004).

Figure 1. Estimated total harbor seals by month based on counts at the site by Hanan & Associates, Yochem and Stewart, and Children's Pool docents. The polynomial curve fits to counts by months was used to estimate harbor seals expected to be hauled-out by day.



A complete count of all harbor seals in California is impossible because some are always away from the haul-out sites. A complete pup count (as is done for other pinnipeds in California) is also not possible because harbor seals are precocial, with pups entering the water almost immediately after birth. Population size is estimated by counting the number of seals ashore during the peak haul-out period (May to July) and by multiplying this count by a correction factor equal to the inverse of the estimated fraction of seals on land. Based on the most recent harbor seal counts (2009) and including a revised correction factor, the estimated population of harbor seals in California is 30,196 individuals (NMFS, 2011), with an estimated minimum population of 26,667 for the California stock of harbor seals. Counts of harbor seals in California increased from 1981 to 2004. The harbor seal is not listed under the ESA and the California stock is not considered depleted or strategic under the MMPA (Carretta *et al.*, 2010).

California Sea Lion

The California sea lion is a separate species from the Galapagos sea lion (*Zalophus wollebaeki*) and the extinct Japanese sea lion (*Zalophus japonicus*) (Brunner, 2003; Wolf *et al.*, 2007; Schramm *et al.*, 2009), and is found from southern Mexico to southwestern Canada. The breeding areas of the California sea lion are on islands located in southern California, western Baja California, and the Gulf of California. A genetic analysis of California sea lions identified five genetically distinct geographic populations: (1) Pacific Temperate, (2) Pacific Subtropical, (3) Southern Gulf of California, (4) Central Gulf of California, and (5) Northern Gulf of California (Schramm *et al.*, 2009). In that study, the Pacific Temperate population included rookeries within U.S. waters and the Coronados Islands just south of U.S./Mexico border. Animals from the Pacific Temperate population range north into Canadian waters, and movement of animals between U.S. waters and Baja California waters has been documented, though the distance between the major U.S. and Baja California rookeries is at least 740.8 km (400 nmi). Males from western Baja California rookeries may spend most of the year in the United States.

The entire California sea lion population cannot be counted because all age and sex classes are never ashore at the same time. In lieu of counting all sea lions, pups are counted during the breeding season (because this is the only age class that is ashore in its entirety), and the numbers of births is estimated from the pup count. The size of the population is then estimated from the number of births and the proportion of pups in the population. Censuses are conducted in July after all pups have been born. There are no rookeries at or near the Children's Pool, although in the past two years births have been reported at La Jolla Cove (about 0.75 km [0.47 miles] east of Children's Pool). Population estimates for the U.S. stock of California sea lions range from a minimum of 153,337 to an average estimate of 296,750 animals. The California sea lion is not listed under the ESA and the U.S. stock is not considered depleted or strategic under the MMPA.

The rocks and beaches at or near the Children's Pool in La Jolla, CA, are almost exclusively Pacific harbor seal hauling-out sites. On infrequent occasions, one or two California sea lions have been observed on the sand or rocks at or near the Children's Pool (*i.e.*, breakwater ledge/rocks haul-out area, reef haul-out area, and Casa Beach haul-out area). These sites are not usual haul-out locations for California sea lions. The City of San Diego commissioned two studies of harbor seal abundance trends at the Children's Pool. Both studies reported that appearances of California sea lions are infrequent, but not rare at Children's Pool (Yochem and Stewart 1998); Hanan, 2004; Hanan & Associates, 2011). During 2013, the City of San Diego observed one juvenile and three adult California sea lions at the Children's Pool. During 2014, the City of San Diego observed 22 California sea lions (during 19 days) at the Children's Pool. Adult sea lions were also observed hauling out on rocks and cliffs near the Children's Pool. A report from 2015 monitoring is still in process at this time.

Northern Elephant Seal

Northern elephant seals breed and give birth in California (U.S.) and Baja California (Mexico), primarily on offshore islands (Stewart *et al.*, 1994) from December to March (Stewart and Huber, 1993). Spatial segregation in foraging areas between males and females is evident from satellite tag data (Le Beouf *et al.*, 2000). Males migrate to the Gulf of Alaska and western Aleutian Islands along the continental shelf to feed on benthic prey, while females migrate to pelagic areas in the Gulf of Alaska and the central North Pacific to feed on pelagic prey (Le Beouf *et al.*, 2000). Adults return to land between March and August to molt, with males returning later than females. Adults return to their feeding areas again between their spring/summer molting and their winter breeding seasons.

Populations of northern elephant seals in the U.S. and Mexico have recovered after being nearly hunted to extinction (Stewart *et al.*, 1994). Northern elephant seals underwent a severe population bottleneck and loss of genetic diversity when the population was reduced to an estimated 10 to 30 individuals (Hoelzel *et al.*, 2002). However, movement and genetic exchange continues between rookeries when they start breeding (Huber *et al.*, 1991). The California breeding population is now demographically isolated from the Baja California population. The California breeding population is considered in NMFS's stock assessment report to be a separate stock.

A complete population count of elephant seals is not possible because all age classes are not ashore simultaneously. Elephant seal population size is typically estimated by counting the number of pups produced and multiplying by the inverse of the expected ratio of pups to total animals (McCann, 1985). Based on counts of elephant seals at U.S. rookeries in 2010, Lowry *et al.* (2014) reported that 40,684 pups were born. Lowry *et al.* (2014) applied a multiplier of 4.4 to extrapolate from total pup counts to a population estimate of approximately 179,000 elephant seals. This multiplier is derived from life tables based on published elephant seal fecundity and survival rates, and reflects a population with approximately 23% pups (Cooper and Stewart, 1983; Le Boeuf and Reiter, 1988; Hindell 1991; Huber *et al.*, 1991; Reiter and Le Boeuf, 1991; Clinton and Le Boeuf, 1993; Le Boeuf *et al.*, 1994; Pistorius and Bester, 2002; McMahon et al., 2003; Pistorius *et al.*, 2004; Condit *et al.*, 2014). The minimum population size for northern elephant seals in 2010 can be estimated very conservatively as 81,368, which is equal to twice the observed pup count (to account for the pups and their mothers). The population is reported to have grown at 3.8% annually since 1988 (Lowry *et al.*, 2014). Northern elephant seals are not listed under the ESA and are not considered as depleted or a strategic stock under the MMPA.

The rocks and beaches at or near the Children's Pool in La Jolla, CA, are almost exclusively Pacific harbor seal hauling-out sites. On infrequent occasions, juvenile northern elephant seal have been observed on the sand or rocks at or near the Children's Pool (*i.e.*, breakwater ledge/rocks haul-out area, reef haul-out area, and Casa Beach haul-out area). These sites are not usual haul-out locations for northern elephant seals. The City of San Diego commissioned two studies of harbor seal abundance trends at the Children's Pool. Both studies reported that appearances of northern elephant seals are infrequent, but not rare at Children's Pool (Yochem and Stewart 1998); Hanan, 2004; Hanan & Associates, 2011). During 2013, the City of San Diego observed two juvenile northern elephant seals at the Children's Pool. During 2014, the City of San Diego observed 30 juvenile elephant seals (during 29 days) at the Children's Pool. A report from 2015 monitoring is still in process at this time.

Potential Effects of the Proposed Specified Activity on Marine Mammals

A significant body of monitoring data exists for pinnipeds at Children's Pool. In addition, pinnipeds have co-existed with heavy public use at this location, and are likely habituated to human presence and activity. Nevertheless, the City of San Diego's sand sampling activities have the potential to disturb pinnipeds present on the beach. Past monitoring at this location has revealed that some or all of the seals present may move or flush from the beach in response to the presence of humans or their pets as well as crew and equipment associated with construction, though some may remain hauled-out. No stampeding of seals—a potentially dangerous occurrence in which large numbers of animals succumb to mass panic and rush away from a stimulus—has been documented. While it is likely impossible to conduct the proposed sand sampling activities without provoking some response in hauled-out animals, precautionary mitigation measures, described later in this document, help ensure that this type of disturbance would be minimized. Under these conditions, it is anticipated that seals would exhibit a continuum of responses, beginning with alert movements (*e.g.*, raising the head), which may then escalate to movement away from the stimulus and possible flushing into the water. Flushed seals typically re-occupy the haul-out within minutes to hours of the stimulus.

In the absence of appropriate mitigation measures, it is possible that pinnipeds could be subject to injury, serious injury, or mortality, likely through abandonment of pups. However, based on a significant body of site-specific data, harbor seals are unlikely to sustain any harassment that may be considered biologically significant. Individual animals would, at most, flush into the water in response to the sand sampling activities, but may also simply become alert or move across the beach away from the sand sampling crew.

California sea lions and northern elephant seals have been observed as less sensitive to stimulus than harbor seals during monitoring at numerous other sites. For example, monitoring of pinniped disturbance as a result of abalone research in the Channel Islands showed that while harbor seals flushed at a rate of 69 percent, California sea lions flushed at a rate of only 21 percent. The rate for elephant seals declined to 0.1 percent (VanBlaricom, 2010). In the event that either of these species is present during management activities, they would be expected to display a minimal reaction to maintenance activities, and it is expected that reaction would be less than that expected of harbor seals.

Children's Pool is a rookery for harbor seals, so we have evaluated the potential for injury, serious injury, or mortality to pups. Pup injury or mortality would be most likely to occur in the event of extended separation of a mother and pup, or trampling in a stampede. As discussed previously, no stampedes have been recorded at Children's Pool. Any California sea lions or northern elephant seals present would be independent juveniles or adults; therefore, analysis of impacts on pups is not relevant for those species.

The period of mother-pup bonding, a critical time needed to ensure pup survival and maximize pup health, is not expected to be impacted by the sand sampling activities. Harbor seal pups are extremely precocious, swimming and diving immediately after birth and throughout the lactation period, unlike most other phocids which normally enter the sea only after weaning (Lawson and Renouf, 1985; Cottrell *et al.,* 2002; Burns *et al.,* 2005). Lawson and Renouf (1987) investigated harbor seal mother-pup bonding in response to natural and anthropogenic disturbance. In summary, they found that the most critical bonding time is within minutes after birth. As described previously, the peak of pupping season is typically concluded by mid-May, and the beach is closed to the public until that time. An additional two week period was added to that time before sand sampling activities could begin (to begin June 1) in order to account for any potentially late-weaning pups. As such, it is expected that mother-pup bonding would likely be concluded as well. In addition, mitigation measures described later in this document further reduce the likelihood of any impacts to pups, whether through injury or mortality or interruption of mother-pup bonding (which may lead to abandonment).

In summary, and based on extensive monitoring data, we believe that impacts to hauled-out pinnipeds during estuary management activities would be behavioral harassment of limited duration (*i.e.,* less than one day) and limited intensity (*i.e.,* temporary flushing at most). Stampeding, and therefore injury or mortality associated with stampeding, is not expected. Further, the continued use of the haul-out despite decades of public use at this site indicates that abandonment of the haul-out is unlikely.

Anticipated Effects on Marine Mammal Habitat

Harbor seals have been observed hauling-out and documented giving birth at the Children's Pool since the 1990's (Yochem and Stewart, 1998; Hanan & Associates, 2004). It is one of the three known haul-out sites for this species in San Diego County and is the only rookery in San Diego County and the only mainland rookery on the U.S. west coast between the border of Mexico and Point Mugu in Ventura County, CA. In addition to Pacific harbor seals, California sea lions and northern elephant seals have also been observed at Children's Pool Beach occasionally (Yochem and Stewart 1998; Hanan 2004; Hanan & Associates 2014). More information on this population of Pacific harbor seals can be found in the "Description of Marine Mammals in the Specified Geographic Area of the Proposed Specified Activity."

The primary anticipated adverse impact upon habitat consists of the removal of sand from the beach. This change is minor, temporary, and limited in duration to the period of the sand sampling activities. All sand sampling activities will take place on the sand beach area normally occupied by hauled out seals. Although sand will be collected from the beach, the total volume removed over the course of the study is estimated to be less than one cubic foot. Additionally, a subset of samples will be collected approximately 25 to 50 centimeters (cm) below the sand surface. Because of the mechanism of collection (use of a hollow plastic tube and rubber mallet with minimal digging), only transient sand displacement is anticipated. Therefore, we do not anticipate impacts to habitat.

The area of habitat affected is small and the effects are localized and temporary; thus there is no reason to expect any significant reduction in habitat available for other habitat uses. No aspect of the project is anticipated to have any permanent effect on the location or use of pinniped haul-outs or related habitat features in the area. Further, the site is already very disturbed by members of the public who come to the area during the day and night to view the pinnipeds. The City of San Diego and NMFS do not project any loss or modification of physical habitat for these species. Any potential temporary loss or modification of habitat due to the presence of the sand sampling technicians and their activities during the proposed sand quality study is expected by the City of San Diego and NMFS to be quickly restored after the sand sampling activities end.

For these reasons, NMFS anticipates that the proposed action would result in no impacts to marine mammal habitat beyond rendering the areas of Children's Pool Beach immediately around the sand sampling activities less desirable. These sampling activities would be temporary and would occur relatively infrequently, as they are anticipated to occur up to 16 times over the months of May to December for approximately four hours at a time. Thus, any impacts to marine mammal habitat are not expected to cause significant or long-term consequences for individual marine mammals or their populations.

Proposed Mitigation

In order to issue an Incidental Take Authorization (ITA) under section 101(a)(5)(D) of the MMPA, NMFS must prescribe, where applicable, the permissible methods of taking pursuant to such activity, and other means of effecting the least practicable impact on such species or stock and its habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance, and on the availability of such species or stock for taking for certain subsistence uses (where relevant).

The City of San Diego has established the Children's Pool as a shared beach for pinnipeds and people except during pupping season, when the beach has been closed to the public in order to protect the seals. In the past, during the pupping season, a rope was placed along the upper part of the beach with signage to inform and designate how close people can come to the haul-out area and the pinnipeds. The timeframe for the rope has been extended so that it is now present year-round.

The activities proposed by the applicant include a variety of measures to minimize potential impacts on marine mammals, including:

Prohibition of Sand Sampling During Pupping Season

Sand sampling activities shall be prohibited during the Pacific harbor seal pupping season (December 15th to May 15th), and for an additional two weeks thereafter to accommodate lactation and weaning of late season pups. Thus, sand quality study activities shall be prohibited until June 1, 2016 and would be required to end before December 15, 2016.

Limiting Activity to Daylight Hours

Sand sampling activities shall be conducted during daylight hours only. As Protected Species Observers (PSOs) will be required to monitor the sand sampling activities (see discussion below), conducting the sampling events during daylight hours with adequate visibility will allow observers to adequately observe and record activities.

Daily Sand Sampling Timing

Sand sampling activities shall be scheduled, to the maximum extent practicable, during the daily period of lowest haul-out occurrence, from approximately 8:30 a.m. to 3:30 p.m., as harbor seals typically have the highest daily or hourly haul-out period during the afternoon from 3 p.m. to 6 p.m. However, sand sampling activities may be extended from 7 a.m. to 7 p.m. to help assure that the project can be completed at a time with low numbers of seals hauled out.

Avoidance/Minimization of Interaction with Pinnipeds

As stated above, per Dr. Doyle Hanan, ongoing observations of harbor seals at Children's Pool have indicated a habituation to the presence of people and therefore, generally show signs of disturbance when people are very close to them on the beach (generally less than two to three meters). Sand sampling activities will be conducted such that humans remain at least three meters from hauled out pinnipeds at all times. While the study calls for taking samples along transects, there is enough flexibility to allow for variation from the transect line to collect samples and still allow for minimizing approach to pinnipeds on the beach. Therefore, hauled out pinnipeds will be minimized or avoided, and efforts will be made to avoid disturbing/alerting/flushing them.

Protected Species Observers

Trained PSOs would be used to detect, document, and minimize impacts to marine mammals. More information about this measure is contained in the "Proposed Monitoring" section (below).

Proposed Mitigation Conclusions

NMFS has carefully evaluated the applicant's mitigation measures and considered a range of other measures in the context of ensuring that NMFS prescribes the means of effecting the least practicable impact on the affected marine mammal species and stocks and their habitat. NMFS's evaluation of potential measures included consideration of the following factors in relation to one another:

- The manner in which, and the degree to which, the successful implementation of the measure is expected to minimize adverse impacts to marine mammals;
- The proven or likely efficacy of the specific measure to minimize adverse impacts as planned; and
- The practicability of the measure for applicant implementation, including consideration of personnel safety, practicality of implementation, and impact on the effectiveness of the activity.

Any mitigation measure(s) prescribed by NMFS should be able to accomplish, have a reasonable likelihood of accomplishing (based on current science), or contribute to the accomplishment of one or more of the general goals listed below:

(1) Avoidance or minimization of injury or death of marine mammals wherever possible (goals 2, 3, and 4 may contribute to this goal).

(2) A reduction in the numbers of marine mammals (total number or number at biologically important time or location) exposed to visual or auditory stimuli associated with the proposed sand quality study, or other activities expected to result in the take of marine mammals (this goal may contribute to 1, above, or to reducing harassment takes only).

(3) A reduction in the number of times (total number or number at biologically important time or location) individuals would be exposed to visual or auditory stimuli associated with the proposed sand quality study, or other activities expected to result in the take of marine mammals (this goal may contribute to 1, above, or to reducing harassment takes only).

(4) A reduction in the intensity of exposures (either total number or number at biologically important time or location) to visual or auditory stimuli associated with the proposed sand quality study, or other activities expected to result in the take of marine mammals (this goal may contribute to a, above, or to reducing the severity of harassment takes only).

(5) Avoidance of minimization of adverse effects to marine mammal habitat, paying special attention to the food base, activities that block or limit passage to or from biologically important areas, permanent destruction of habitat, or temporary destruction/disturbance of habitat during a biologically important time.

(6) For monitoring directly related to mitigation—an increase in the probability of detecting marine mammals, thus allowing for more effective implementation of the mitigation.

Based on NMFS's evaluation of the applicant's proposed measures, as well as other measures considered by NMFS, NMFS has preliminarily determined that the proposed mitigation measures provide the means of effecting the least practicable impact on marine mammal species or stocks and their habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance.

Proposed Monitoring and Reporting

In order to issue an ITA for an activity, section 101(a)(5)(D) of the MMPA states that NMFS must, where applicable, set forth "requirements pertaining to the monitoring and reporting of such taking." The MMPA implementing regulations at 50 CFR 216.104 (a)(13) require that requests for ITAs include the suggested means of accomplishing the necessary monitoring and reporting that will result in increased knowledge of the species and of the level of taking or impacts on populations of marine mammals that are expected to be present in the proposed action area.

Monitoring measures prescribed by NMFS should accomplish one or more of the following general goals:

(1) An increase in the probability of detecting marine mammals, both within the mitigation zone (thus allowing for more effective implementation of the mitigation) and in general to generate more data to contribute to the analyses mentioned below;

(2) An increase in our understanding of how many marine mammals are likely to be exposed to visual or auditory stimuli associated with the proposed sand quality study that we associate with specific adverse effects, such as behavioral harassment;

(3) An increase in our understanding of how marine mammals respond to stimuli expected to result in take and how anticipated adverse effects on individuals (in different ways and to varying degrees) may impact the population, species, or stock (specifically through effects on annual rates of recruitment or survival) through any of the following methods:

- Behavioral observations in the presence of stimuli compared to observations in the absence of stimuli (need to be able to accurately predict distance from source, and other pertinent information);

- Physiological measurements in the presence of stimuli compared to observations in the absence of stimuli (need to be able to accurately predict distance from the source, and other pertinent information);
- Distribution and/or abundance comparisons in times or areas with concentrated stimuli versus times or areas without stimuli;

(4) An increased knowledge of the affected species;

(5) An increase in our understanding of the effectiveness of certain mitigation and monitoring measures; and

(6) An increase in our level of knowledge regarding the overall health of the monitored species, particularly in light of recent local UMEs and observations of malnutrition increases in the area.

Proposed Monitoring

The City of San Diego has developed a monitoring plan based on discussions between the City of San Diego and NMFS, as well as review of past IHAs granted to the City of San Diego. The plan is also included as an Appendix to our draft Environmental Assessment (EA) for issuance of the IHA for the sand quality study activities (see National Environmental Policy Act section below), which is available for public review along with the draft EA.

The monitoring plan involves PSOs surveying and conducting hourly visual counts beginning prior to sand sampling activities (beginning at least 30 minutes prior to sampling activities), monitoring during sampling activities, and post-sand sampling monitoring (continuing for at least 30 minutes after sand sampling activities have ended). During each sample collection event, the PSO will conduct continuous monitoring from a vantage point along the seawall (weather permitting) or along the bluff above the beach, such that the full study area is in view. During the proposed sand sampling activities, monitoring shall assess behavior and potential behavioral responses to noise and visual stimuli due to the proposed activities. As noted above, if northern fur seals or Guadalupe fur seals are observed prior to commencement of activities, the activities will not occur and coordination with the stranding network will be initiated.

Counts will be performed by species for three zones: Pinnipeds hauled out on the sandy beach area, pinnipeds observed in the water within approximately 30 meters of the beach, and pinnipeds hauled out on the reef/rocks just off the beach (including Seal Rock). Total counts, counts of juveniles (yearlings and pups), and counts of males/females (when possible) will be recorded. In addition to counts, continuous behavioral monitoring will be conducted for the duration of the sampling event to document any behavioral responses to visual (or other) stimuli, as noted in Table 2 below. When responses are observed, the type of take (*i.e.*, alert and flush, movement of more than one meter, or change in direction of movement) and the assumed cause (whether related to sample collection activities or not) will be noted by species. Photographs and/or video will be taken to document these responses.

TABLE 2—SEAL RESPONSE TO DISTURBANCE

Level	Type of response	Definition
1	Alert	Seal head orientation or brief movement in response to disturbance, which may include turning head towards the disturbance, craning head and neck while holding the body rigid in a u-shaped position, changing from a lying to a sitting position, or brief movement of less than twice the animal's body length. Alerts would be recorded, but not counted as a 'take'.
2	Movement	Movements away from the source of disturbance, ranging from short withdrawals at least twice the animal's body length to longer retreats over the beach including changing direction of travel, or movement along the beach from a resting position. These movements would be recorded and counted as a 'take'.
3	Flush	All retreats (flushes) to the water. Flushing into the water would be recorded and counted as a 'take'.

Additional parameters will be recorded during the first and last count of each sampling event including Beaufort sea state; atmospheric conditions; cloud cover; visibility conditions; air and water temperature; tide height; and number of public visitors present by location at Children's Pool.

Field observations will be documented on Field Monitoring Forms, and all observations and associated data, including daily monitoring reports, would be maintained on City of San Diego computers. A report summarizing mitigation and monitoring for the duration of the Children's Pool Beach sand quality study will be prepared and submitted by the City of San Diego to NMFS following completion of sand sampling activities for the 2016 sampling season.

The following marine mammal monitoring and reporting shall be performed for the proposed action:

(1) The PSO shall be selected prior to sand sampling activities.

(2) The NMFS-approved PSO shall attend the project site prior to, during, and after sand sampling activities cease each day that the sand sampling activities occur.

(3) The PSO shall search for marine mammals within the Children's Pool area.

(4) The PSO shall be present during sand sampling activities to observe for the presence of marine mammals in the vicinity of the specified activity. All such activity would occur during daylight hours (*i.e.*, 30 minutes after sunrise and 30 minutes before sunset). If inclement weather limits visibility within the area of effect, the PSO would perform visual scans to the extent conditions allow.

(5) If marine mammals are sighted by the PSO, the PSO shall record the number of marine mammals and the duration of their presence while the sand sampling activity is occurring. The PSO would also note whether the marine mammals appeared to respond to the noise/visual stimuli and, if so, the nature of that response. The PSO shall record the following information: Date and time of initial sighting, tidal stage, weather conditions, Beaufort sea state, species, behavior (activity, group cohesiveness, direction and speed of travel, etc.), number, group composition, distance between sampling personnel and pinniped(s), number of animals impacted, sampling activities occurring at time of sighting (walking, taking surface sample, or pounding core sampler), and monitoring and mitigation measures implemented (or not implemented). The observations would be reported to NMFS.

(6) To avoid takes of Guadalupe fur seals, if fur seals are observed to be hauled out on the beach, or in the water/rocks at the Children's Pool Beach prior to the initiation of sand collection activities, sand sampling activities will not commence. PSOs will alert the stranding network, as the occurrence of these species would typically indicate a sick/injured animal. Recommendations of the stranding coordinator will be followed, which may include a 24-hour or 48-hour waiting and observation period, and sand sampling would not commence until the animal(s) either vacated the area on its own, or was collected by the stranding network

(7) A final report would be submitted summarizing all effects from sand sampling activities and marine mammal monitoring during the time of the authorization.

A written log of dates and times of monitoring activity will be kept. The log shall report the following information:

- Time of observer arrival on site;
- Time of the commencement of sand sampling activities;
- Distances to all marine mammals relative to the stimuli;
- For harbor seal, northern elephant seal, and California sea lion observations, notes on behavior during sand sampling activity, as described above, and on the number and distribution observed in the project vicinity;
- For observations of all marine mammals other than harbor seals, northern elephant seals, and California sea lions, the time and duration of each animal's presence in the project vicinity; the number of animals observed; the behavior of each animal, including any response to sand sampling activities;
- Time of the cessation of sand sampling activities; and
- Time of observer departure from site.

All monitoring data collected during sand sampling events would be included in the biological monitoring notes to be submitted. A final report summarizing the sand sampling monitoring and any general trends observed would also be submitted to NMFS within 90 days after monitoring has ended during the period of the sand quality study or 45 days prior to the date by which any subsequent IHA is requested by the City of San Diego, whichever comes first.

Proposed Reporting

A draft final report must be submitted to NMFS within 90 days after the conclusion of the final sand sampling activities of the Children's Pool Beach. The report would include a summary of the information gathered pursuant to the monitoring requirements set forth in the IHA, including dates and times of operations and all marine mammal sightings (dates, times, locations, species, behavioral observations [activity, group cohesiveness, direction and speed of travel, etc.], tidal stage, weather conditions, Beaufort sea state and wind force, associated sand sampling activities). A final report must be submitted within 30 days after receiving comments from NMFS on the draft final report. If no comments are received from NMFS, the draft final report would be considered to be the final report.

While the IHA does not authorize injury (*i.e.,* Level A harassment), serious injury, or mortality, should the applicant, contractor, monitor or any other individual associated with the sand quality study observe an injured or dead marine mammal, the incident (regardless of cause) will immediately be reported to NMFS stranding coordinator. The report should include species or description of animal, condition of animal, location, time first found, observed behaviors (if alive) and photo or video, if available.

In the unanticipated event that the City of San Diego discovers a live stranded marine mammal (sick and/or injured, or if any fur seals are observed) at Children's Pool, they shall immediately contact Sea World's stranded animal hotline at 1–800–541–7235. Sea World shall also be notified if a dead stranded pinniped is found so that a necropsy can be performed. In all cases, NMFS stranding coordinator shall be notified as well, but for immediate response purposes, Sea World shall be contacted first.

Reporting Prohibited Take—In the unanticipated event that the specified activity clearly causes the take of a marine mammal in a manner prohibited by this IHA, such as an injury (Level A harassment), serious injury, or mortality, the City of San Diego shall immediately cease the specified activities and immediately report the incident to the Chief of the Permits and Conservation Division, Office of Protected Resources, NMFS, and the West Coast Regional Stranding Coordinator. The report must include the following information:

- Time, date, and location (latitude/longitude) of the incident;
- The type of activity involved;
- Description of the circumstances during and leading up to the incident;
- Water depth; environmental conditions (*e.g.,* wind speed and direction, Beaufort sea state, cloud cover, and visibility);
- Description of marine mammal observations in the 24 hours preceding the incident; species identification or description of the animal(s) involved;
- The fate of the animal(s); and photographs or video footage of the animal (if equipment is available).

Activities shall not resume until NMFS is able to review the circumstances of the prohibited take. NMFS shall work with the City of San Diego to determine the action necessary to minimize the likelihood of further prohibited take and ensure MMPA compliance. The City of San Diego may not resume its activities until notified by NMFS via letter, email, or telephone.

Reporting an Injured or Dead Marine Mammal with an Unknown Cause of Death—In the event that the City of San Diego discovers an injured or dead marine mammal, and the lead PSO determines that the cause of the injury or death is unknown and the death is relatively recent (*i.e.,* in less than a moderate state of decomposition as described in the next paragraph), the City of San Diego would immediately report the incident to the Chief of the Permits and Conservation Division, Office of Protected Resources, NMFS, and the West Coast Regional Stranding Coordinator. The report must include the same information identified above. Activities may continue while NMFS reviews the circumstances of the incident. NMFS would work with the City of San Diego to determine whether modification of the activities is appropriate.

Reporting an Injured or Dead Marine Mammal Not Related to the Activities—In the event that the City of San Diego discovers an injured or dead marine mammal, and the lead PSO determines that the injury or death is not associated with or related to the activities authorized (*e.g.,* previously wounded animal, carcass with moderate to advanced decomposition, or scavenger damage), the City of San Diego shall report the incident to the Chief of the Permits and Conservation Division, Office of Protected Resources, NMFS , and the West Coast Regional Stranding Coordinator within 24 hours of the discovery. The City of San Diego shall provide photographs or video footage (if available) or other documentation of the stranded animal sighting to NMFS and the Marine Mammal Stranding Network. Activities may continue while NMFS reviews the circumstances of the incident.

Monitoring Results From Previously Authorized Activities

2013 to 2014

Hanan & Associates, Inc., on behalf of the City of San Diego, conducted marine mammal and in-air sound monitoring at six locations during demolition and construction activities at the Children's Pool Lifeguard Station in La Jolla, California from June 3, 2013 to February 12, 2014. Demolition and construction activities began on July 10, 2013 and were halted for the Pacific harbor seal pupping season (December 15, 2013 to May 30, 2014). During 115 days of visual and acoustic observations, Hanan & Associates counted a total of 61,631 Pacific harbor seals and 26,037 people. During the 2013 demolition and construction activities, Hanan & Associates observed a total of 15,673 takes by Level B harassment (*i.e.*, alerts, movements, and flushes) that could be attributed to demolition and construction activities (5,095 takes), the general public (8,639 takes), and other sources (1,939 takes). As of April 15, 2014, at least 60 harbor seal pups (including 2 still births) have been born at the Children's Pool and there has been no indication of abandonment. In addition to the Pacific harbor seal sightings, PSOs recorded three sightings of California sea lions (1 juvenile, 3 adult), and 2 northern elephant seals (both juveniles) at the Children's Pool.

2014 to 2015

Hanan & Associates, Inc., on behalf of the City of San Diego, conducted marine mammal monitoring at seven locations during demolition and construction activities at the Children's Pool Lifeguard Station in La Jolla, California from August 6, 2014 to March 15, 2015. Construction activities began on August 6, 2014 and were halted for the Pacific harbor seal pupping season (December 15, 2014 to May 30, 2015). During 127 days of visual and acoustic observations, Hanan & Associates counted a total of 63,598 Pacific harbor seals and 27,844 people. During the 2014 demolition and construction activities, Hanan & Associates observed a total of 20,259 takes by Level B harassment (*i.e.*, alerts, movements, and flushes) that could be attributed to demolition and construction activities (7,424 takes), the general public (10,000 takes), and other sources (2,835 takes). As of March 13, 2015, at least 60 harbor seal pups (including 6 still or premature births) have been born at the Children's Pool and there has been no indication of abandonment. In addition to the Pacific harbor seal sightings, 366 sightings of California sea lions (93 at Children's Pool beach; others were at Seal Rock, South Casa Beach, and on the reef), and 1 northern elephant seal (juvenile). One dead adult and one dead juvenile California sea lion were sighted on the Children's Pool beach after the start of the beach closure and after the construction activities stopped for the pupping season. These strandings were reported to NMFS.

More information on the monitoring results from the City of San Diego's previous demolition and construction activities at the La Jolla Children's Pool Lifeguard Station can be found in the final monitoring reports. The 2013 to 2014 and 2014 to 2015 monitoring reports can be found online at: *http://www.nmfs.noaa.gov/pr/permits/incidental/construction.htm#childrenspool.*

Estimated Take by Incidental Harassment

Except with respect to certain activities not pertinent here, the MMPA defines "harassment" as: Any act of pursuit, torment, or annoyance which (i) has the potential to injure a marine mammal or marine mammal stock in the wild [Level A harassment]; or (ii) has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering [Level B harassment].

The City of San Diego and NMFS anticipate takes of Pacific harbor seals, California sea lions, and northern elephant seals by Level B (behavioral) harassment only incidental to visual disturbance associated with the sand quality study sand sampling activities at the Children's Pool Beach. No takes by injury (Level A harassment), serious injury, or mortality are expected. NMFS will consider pinnipeds behaviorally reacting to the sand sampling activities by flushing into the water, moving more than twice the animal's body length but not into the water; becoming alert and moving more than twice its body length; and changing direction of current movements by individuals as behavioral criteria for take by Level B harassment.

With proposed sand sampling activities scheduled to begin in May 2016, the City of San Diego expects a range of harbor seals to be present daily during June with a maximum of up to 190 individuals and a seasonal decline through November to about 0 to 50 harbor seals present daily. As not all of the sampling activities have been planned, and there is uncertainty regarding the timing and number of all activities, we have assumed the maximum number of authorized sampling activities (16) occurring during the maximum haul out month (June) in order to estimate take numbers. If all of the estimated harbor seals present are taken by incidental harassment each day, there could be a maximum of 3,040 incidences of take (*i.e.*, approximately 896 adult males and 672 juvenile males, 864 adult females and 608 juvenile females based on age and sex ratios presented in Harkonen *et al.*, 1999) over the entire duration of the activities. An unknown portion of the incidental takes will be from repeated exposures as harbor seals leave and return to the Children's Pool area.

Very few California sea lions or northern elephant seals are ever observed at the Children's Pool Beach. As noted above, Children's Pool is almost exclusively a harbor seal haul-out site and on rare occasions, one or two California sea lions or a single juvenile elephant seal have been observed on the sand or rocks at, or near, Children's Pool. However, as noted above, an UME has been in place since 2013 for California sea lions. According to the NMFS West Coast Region, California sea lion strandings in January-May of 2015 were over 10 times the average stranding level for the same five-month period during 2004–2012. The City of San Diego has requested take for these species due to their potential occurrence at this location and past monitoring experience at this location. As the previous IHA authorized take of two individual sea lions incidental to construction activities at Children's Pool, and numbers of sea lion sightings have been over 10 times the average, we estimate that up to 20 individuals may be incidentally taken by Level B harassment equating to 320 exposures (conservatively assuming 20 × 16 sampling events). As only one or two northern elephant seals are known to occur rarely at Children's Pool Beach, it was conservatively estimated that 16 individuals would be exposed to Level B harassment for a total of 16 takes (assuming one present for each of the 16 sampling events). Therefore, NMFS proposes authorizing the following numbers of incidental takes (*i.e.*, Level B harassment): 3,040 Pacific harbor seals (600 individuals), 320 California sea lions (20 individuals), and 16 northern elephant seals (16 individuals). More information on the number of takes authorized, and the approximate percentage of the stock for the three species in the proposed action area can be found in Table 3 (below).

TABLE 3—SUMMARY OF THE AUTHORIZED INCIDENTAL TAKE BY LEVEL B HARASSMENT OF PINNIPEDS FOR THE CITY OF SAN DIEGO'S PROPOSED SAND QUALITY STUDY ACTIVITIES GENERATING VISUAL AND AUDITORY STIMULI AT THE CHILDREN'S POOL BEACH IN LA JOLLA, CA.

Species	Take authorization (number of exposures)	Estimated number of individuals taken	Abundance	Approximate percentage of estimated stock (takes authorized/ population)	Population trend
Pacific harbor seal	3,040	600	30,968—California stock	10	Increased in California 1981 to 2004.
California sea lion	320	20	296,750—U.S. stock	0.1	Increasing.
Northern elephant seal	16	16	179,000—California breeding stock.	<0.01	Increasing 3.8% annually since 1988.

Analysis and Preliminary Determinations

Negligible Impact

Negligible impact is "an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival" (50 CFR 216.103). A negligible impact finding is based on the lack of likely adverse effects on annual rates of recruitment or survival (*i.e.*, population-level effects). An estimate of the number of Level B harassment takes, alone, is not enough information on which to base an impact determination. In addition to considering estimates of the number of marine mammals that might be "taken" through behavioral harassment, NMFS must consider other factors, such as the likely nature of any responses (their intensity, duration, etc.), the context of any responses (critical reproductive time or location, migration, etc.), as well as the number and nature of estimated Level A harassment takes, the number of estimated mortalities, and effects on habitat.

In making a negligible impact determination, NMFS evaluated factors such as:

(1) The number of anticipated injuries, serious injuries, or mortalities;

(2) The number, nature, and intensity, and duration of Level B harassment; and

(3) The context in which the takes occur (*i.e.*, impacts to areas of significance, impacts to local populations, and cumulative impacts when taking into account successive/ contemporaneous actions when added to baseline data);

(4) The status of the stock or species of marine mammals (*i.e.*, depleted, not depleted, decreasing, increasing, stable, impact relative to the size of the population);

(5) Impacts on habitat affecting rates of recruitment/survival; and

(6) The effectiveness of monitoring and mitigation measures.

Behavioral disturbance may potentially occur incidental to the visual presence of humans and sand sampling activities; however, pinnipeds at this site have likely adapted or become acclimated to human presence at this site. The City of San Diego has designated Children's Pool Beach as a shared use beach. Many activities currently take place at Children's Pool Beach and the surrounding shoreline areas including swimming, SCUBA diving, surfing, kayaking, tide pooling, and nature watching. These "urbanized" harbor seals do not exhibit sensitivity at a level similar to that noted in harbor seals in some other regions affected by human disturbance (Allen *et al.*, 1984; Suryan and Harvey, 1999; Henry and Hammil, 2001; Johnson and Acevedo-Gutierrez, 2007; Jansen *et al.*, 2006; Hanan & Associates, 2011). For example, during monitoring for construction for the Children's Pool Lifeguard Station, equipment noise and visual cues at times have caused seals to alert/flush, while at other times the same stimuli have produced no reaction (City of San Diego, 2015). Per the City of San Diego (2015), "[a]t the individual level, a newly arrived seal (which swam in from another area) may not have habituated to humans and noise as have seals that have been onsite for a while. These recent arrivals may alert to visual stimuli, perhaps flushing to the water. But after a few days using this beach during the non-pupping season (when humans are also present on the beach), we would expect them to habituate and generally not react to humans unless very close to them (Hanan 2004, Hanan & Associates 2011, Hanan and Hanan 2014)." Therefore, there is a high likelihood that many of the harbor seals present during the proposed sand sampling activities would not be flushed off of the beach or rocks, as pinnipeds at this site are conditioned to human presence (Hanan, 2004; Hanan & Associates, 2011) (see *http://www.youtube.com/watch?v=4IRUYVTULsg*), and it is anticipated that takes would likely be of lesser intensity than would be expected at other locations.

No injuries (Level A harassment), serious injuries, or mortalities are anticipated to occur as a result of the City of San Diego's sand sampling activities, and none are proposed for authorization by NMFS. The proposed activities are not expected to result in the alteration of reproductive behaviors because of the moratorium on access to the beach during the pupping season, and the potentially affected species would be subjected to only temporary and minor behavioral impacts.

As discussed in detail above, the proposed project scheduling avoids sensitive life stages for Pacific harbor seals. Proposed project activities will commence June 1 and end by December 15. The commencement date occurs after the end of the pupping season, affords additional time to accommodate lactation and weaning of late-season pups, and takes into account periods of lowest haul-out occurrence. The end date falls approximately two weeks prior to January 1, the time after which most births occur, providing protection for pregnant and nursing harbor seals that may give birth before January 1.

Table 3 of this document outlines the number of Level B harassment takes that are anticipated as a result of these proposed activities. Due to the nature, degree, and context of Level B (behavioral) harassment anticipated and described (see "Potential Effects on Marine Mammals" section above) in this notice, this activity is not expected to impact rates of annual recruitment or survival for the affected species or stock (*i.e.*, California stock of Pacific harbor seals, U.S. stock of California sea lions, and California breeding stock of northern elephant seals), particularly given the proposed mitigation, monitoring, and reporting measures that would be implemented to minimize impacts to marine mammals.

The Children's Pool is one of the three known haul-out sites for Pacific harbor seal in San Diego County and the only rookery in San Diego County and the only mainland rookery on the U.S. west coast for this species between the border of Mexico and Point Mugu in Ventura County, CA. For the other marine mammal species that may occur within the action area (*i.e.*, California sea lions and northern elephant seals), there are no known designated or important feeding and/or reproductive areas at the project site. Many animals perform vital functions, such as feeding, resting, traveling, and socializing, on a diel cycle (*i.e.*, 24 hour cycle). Behavioral reactions (such as disruption of critical life functions, displacement, or avoidance of important habitat) are more likely to be significant if they last more than one diel cycle or recur on subsequent days (Southall *et al.*, 2007). However, Pacific harbor seals have been hauling-out at Children's Pool during the year for many years (including during pupping season and while females are pregnant) while being exposed to anthropogenic sound sources such as vehicle traffic, human voices, etc. and other stimuli from human presence. The Pacific harbor seals have repeatedly hauled-out to pup over many years and the NMFS Stock Assessment Reports for this stock have shown that the population is increasing and is considered stable (NMFS, 2014). Additionally, the proposed sand sampling activities would generally not take place on subsequent days for long durations, as a maximum of up to 16 sampling events (lasting approximately 4 hours each) are planned for the sand quality study, which would take place over the six-months of the study.

None of the potentially affected marine mammal species under NMFS jurisdiction in the action area (Pacific harbor seals, California sea lions, and northern elephant seals) are listed as threatened or endangered under the ESA. To protect these animals (and other marine mammals in the action area), the City of San Diego shall schedule sand sampling activities during the daily period of lowest haul-out occurrence; limit activities to the hours of daylight; ensuring that technicians performing sand sampling remain at least three meters from any hauled out pinnipeds; use PSOs, prohibit sand sampling activities in the unlikely event that fur seals are present, and prohibit sand sampling activities during harbor seal pupping season.

Although behavioral modifications, including temporarily vacating the area during the proposed sand sampling activities, may be made by these species, the sand quality sampling activities would be fairly sporadic and would be of relatively short duration. NMFS believes that the time period of the proposed sand sampling activities, the requirement to implement mitigation measures (*e.g.*, prohibiting sand sampling activities during pupping season, scheduling operations to periods of the lowest haul-out occurrence, and ensuring a buffer of at least three meters between sampling technicians and hauled out pinnipeds), and the inclusion of the monitoring and reporting measures, will reduce the amount and severity of the potential impacts from the activity.

Based on the analysis contained herein of the likely effects of the proposed specified activity on marine mammals and their habitat, and taking into consideration the implementation of the proposed monitoring and mitigation measures, NMFS preliminarily finds that the total marine mammal take from the City of San Diego's activities would have a negligible impact on the affected marine mammal species or stocks.

Small Numbers

As mentioned previously, NMFS estimates that three species of marine mammals under its jurisdiction could be potentially affected by Level B harassment over the course of the IHA. It is conservatively estimated that the instances of take by Level B harassment (amounting to 3,040 for Pacific harbor seals, 320 for California sea lions, and 16 for northern elephant seals) would be approximately 10%, 0.1%, and less than 0.01% of the respective California, U.S., and California breeding stocks. The population estimates for the marine mammal species that may be taken by Level B harassment were provided in Table 3 of this document.

Based on the analysis contained herein of the likely effects of the specified activity on marine mammals and their habitat, and taking into consideration the implementation of the proposed mitigation and monitoring measures, NMFS preliminarily finds that small numbers of marine mammals will be taken relative to the populations of the affected species or stocks. See Table 3 for the proposed authorized take numbers of marine mammals.

Impact on Availability of Affected Species or Stock for Taking for Subsistence Uses

Section 101(a)(5)(D) of the MMPA requires NMFS to determine that the authorization will not have an unmitigable adverse effect on the availability of marine mammal species or stocks for subsistence use. There are not relevant subsistence uses of marine mammals implicated by this action. Therefore, NMFS has determined that the total taking of affected species or stocks would not have an unmitigable adverse impact on the availability of such species or stocks for subsistence purposes.

Endangered Species Act

NMFS (Permits and Conservation Division) has determined that an ESA section 7 consultation for the issuance of an IHA under section 101(a)(5)(D) of the MMPA for this activity is not necessary for the Guadalupe fur seal. This species is rare at Children's Pool Beach. Due to the fact that sightings have occurred in the area, and due to the declaration of a UME for this species in the area, ESA consultation was considered. However, it was determined that the sand sampling activities would have no potential to affect the Guadalupe fur seal because these activities would not occur if this species were present at Children's Pool Beach. No other ESA-listed species are expected to occur in the proposed project area.

National Environmental Policy Act

To meet NMFS's National Environmental Policy Act (NEPA; 42 U.S.C. 4321 *et seq.*) requirements for the issuance of an IHA to the City of San Diego, NMFS prepared a Draft Environmental Assessment (EA) titled *Draft Environmental Assessment of the Issuance of an Incidental Harassment Authorization to the City of San Diego to Take Marine Mammals by Harassment Incidental to Sand Quality Study Activities at the Children's Pool Beach in La Jolla, California* to comply with the Council of Environmental Quality (CEQ) regulations and NOAA Administrative Order (NAO) 216–6. NMFS will evaluate public comments on the proposed action to determine whether a Finding of No Significant Impact (FONSI) is warranted, or if an Environmental Impact Statement (EIS) would be required.

Proposed Authorization

As a result of these preliminary determinations, NMFS proposes to issue an IHA to the City of San Diego for conducting sand quality study activities at the Children's Pool Beach in La Jolla, CA, provided the previously mentioned mitigation, monitoring, and reporting requirements are incorporated. The proposed IHA language is provided below:

The City of San Diego,, is hereby authorized under section 101(a)(5)(D) of the Marine Mammal Protection Act (16 U.S.C. 1371(a)(5)(D)), to harass small numbers of marine mammals incidental to the sand quality study activities at the Children's Pool Beach, June 1 through December 14, 2016, contingent upon the following conditions:

1. *Effective Dates*

This Authorization is valid from June 1, 2016 through June 30, 2017.

2. *Specified Geographic Region*

This Authorization is valid only for the sand sampling activities at the Children's Pool Beach that shall occur in the following specified geographic area:

The La Jolla Children's Pool Beach at 850 Coast Boulevard, La Jolla California 92037 (32° 50′51.18″ North, 117° 16′41.94″ West), as specified in the City of San Diego's IHA application.

3. *Species Authorized and Level of Takes*

(a) The incidental taking of marine mammals, by Level B harassment only, is limited to the following species in the La Jolla, California area:

(i) *Pinnipeds*—see Table 3 (above) for authorized species and take numbers.

(ii) If any marine mammal species are encountered during sand sampling activities that are not listed in Table 3 (above) and are likely to be taken by the sand quality study activities, then the City of San Diego must shut-down operations to avoid take.

(b) The taking by injury (Level A harassment), serious injury, or death of any of the species listed in Condition 3(a) above, or the taking of any kind of any other species of marine mammal, is prohibited and may result in the modification, suspension or revocation of this Authorization.

The methods authorized for taking by Level B harassment are limited to visual stimuli associated with sand sampling activities (walking beach transects, taking sand surface samples, and taking subsurface samples, including hammering core samples with a rubber mallet) without an amendment to this Authorization:

4. *Prohibited Take*

The taking of any marine mammal in a manner prohibited under this Authorization must be reported immediately to the Office of Protected Resources, National Marine Fisheries Service (NMFS), at 301–427–8401.

5. *Mitigation and Monitoring Requirements*

The City of San Diego is required to implement the following mitigation and monitoring requirements when conducting the specified activities:

Sand Sampling Activities Prohibited During Pupping Season

(a) The sand sampling activities shall be prohibited until June 1, 2016 and shall be completed prior to December 15, 2016.

Daily Sand Sampling Timing

(b) To the maximum extent practicable, sand sampling activities shall be conducted from approximately 8:30 a.m. to 3:30 p.m.,; however, sand sampling activities may be extended from 7 a.m. to 7 p.m. (*i.e.*, daylight hours).

Protected Species Observers

(c) A trained Protected Species Observer (PSO) shall attend the project site 30 minutes prior until 30 minutes after sand sampling activities cease each day throughout the sand quality study window. The PSO shall be approved by NMFS prior to commencement of activities. The PSO shall search for marine mammals using binoculars and/or the naked eye within the study area. The PSO will observe from a station along the breakwater wall (weather permitting) as well as the base of the cliff.

(d) In the event that fur seals are observed either on the rocks, beach, or in the water at Children's Pool Beach prior to commencement of sand collection activities, these activities will be postponed until coordination with the stranding network is complete (including any potential 24-hour or 48-hour wait/observation period) and/or the animal either leaves, or is collected by the stranding network.

(e) The PSO shall use visual digital recordings and photographs to document individuals and behavioral responses to the sand sampling activities. The PSO shall make hourly counts of the number of pinnipeds present and record events that result in behavioral responses and changes, whether due to sand sampling activities or from public stimuli. During these events, pictures and videos will be taken when possible to document individuals and behavioral responses.

(f) A PSO shall record the following information when a marine mammal is sighted:

(i) Species, group size, age/size/sex categories (if determinable), behavior when first sighted and after initial sighting, heading (if consistent), distribution, bearing and distance relative to the sampling technicians (stimuli), group cohesiveness, duration of presence, apparent reaction to sand sampling activities (*e.g.*, none, avoidance, approach, etc.), direction and speed of travel, duration of presence, and if there are other causes of potential disturbance occurring;

(ii) Date, time, location, sand sampling activity (walking; surface sampling; subsurface sampling [hammering], etc), monitoring and mitigation measures implemented (or not implemented), tidal stage, weather conditions, Beaufort sea state, wind speed, visibility, and sun glare; and

(iii) The data listed under Condition 6(g)(ii) shall also be recorded at the start and end of each observation watch and during a watch whenever there is a change in one or more variables.

(g) A PSO shall also record the time of arrival and departure on site, commencement and cessation of sand sampling activities, and presence of humans on the beach. Whenever possible, the PSO should determine as to whether or not the harassment of pinnipeds is attributable to the sand sampling activities and/or the presence of the public on the beach and around the Children's Pool area. A PSO shall record the number of people on the beach and surrounding areas as well as their location relative to the animals.

Approach Buffer Zones

(h) Buffer zones shall be established such that sand sampling technicians will remain at least three meters from any hauled out pinniped at all times.

6. *Reporting Requirements*

The City of San Diego is required to:

(a) Submit a draft report on all activities and monitoring results to the Office of Protected Resources, NMFS, within 90 days of the completion of the sand sampling activities at the Children's Pool Beach. This report must contain and summarize the following information:

(i) Dates, times, locations, weather, sea conditions (including Beaufort sea state and wind speed), and associated activities during all sand sampling activities and marine mammal sightings;

(ii) Species, number, location, distance from the PSO, and behavior of any marine mammals, as well as associated sand sampling activities, observed throughout all monitoring activities.

(iii) An estimate of the number (by species) of marine mammals that are known to have been exposed to the sand sampling activities (based on visual observation) with a discussion of any specific behaviors those individuals exhibited. NMFS will consider pinnipeds flushing into the water; moving more than twice their body length, but not into the water; and changing direction of current movement by individuals as behavioral criteria for take by Level B harassment.

(iv) A description of the implementation and effectiveness of the monitoring and mitigation measures of the IHA.

(b) Submit a final report to the Chief, Permits and Conservation Division, Office of Protected Resources, NMFS, within 30 days after receiving comments from NMFS on the draft report. If NMFS decides that the draft report needs no comments, the draft report shall be considered to be the final report.

7. In the unanticipated event that the City of San Diego discovers a live stranded marine mammal (sick and/or injured, or if any fur seals are observed) at Children's Pool, they shall immediately contact Sea World's stranded animal hotline at 1–800–541–7235. Sea World shall also be notified for dead stranded pinnipeds so that a necropsy can be performed. In all cases, the NMFS stranding coordinator shall be notified as well, but for immediate responses purposes, Sea World shall be contacted first.

Reporting Prohibited Take

8. In the unanticipated event that the specified activity clearly causes the take of a marine mammal in a manner prohibited by this Authorization, such as an injury (Level A harassment), serious injury or mortality, the City of San Diego shall immediately cease the specified activities and immediately report the incident to the Chief of the Permits and Conservation Division, Office of Protected Resources, NMFS and the West Coast Regional Stranding Coordinator. The report must include the following information:

(a) Time, date, and location (latitude/longitude) of the incident; the type of activity involved; description of the circumstances during and leading up to the incident; water depth; environmental conditions (*e.g.,* wind speed and direction, Beaufort sea state, cloud cover, and visibility); description of marine mammal observations in the 24 hours preceding the incident; species identification or description of the animal(s) involved; the fate of the animal(s); and photographs or video footage of the animal (if equipment is available).

Activities shall not resume until NMFS is able to review the circumstances of the prohibited take. NMFS shall work with the City of San Diego to determine what is necessary to minimize the likelihood of further prohibited take and ensure MMPA compliance. The City of San Diego may not resume their activities until notified by NMFS via letter or email, or via telephone.

Reporting an Injured or Dead Marine Mammal With an Unknown Cause of Death

In the event that the City of San Diego discovers an injured or dead marine mammal, and the lead PSO determines that the cause of the injury or death is unknown and the death is relatively recent (*i.e.,* in less than a moderate state of decomposition as described in the next paragraph), the City of San Diego will immediately report the incident to the Chief of the Permits and Conservation Division, Office of Protected Resources, NMFS and the NMFS West Coast Regional Office and/or the West Coast Regional Stranding Coordinator. The report must include the same information identified in the Condition 8(a) above. Activities may continue while NMFS reviews the circumstances of the incident. NMFS will work with the City of San Diego to determine whether modifications in the activities are appropriate.

Reporting an Injured or Dead Marine Mammal Not Related to the Activities

In the event that the City of San Diego discovers an injured or dead marine mammal, and the lead PSO determines that the injury or death is not associated with or related to the activities authorized in Condition 2 to 4 of this Authorization (*e.g.,* previously wounded animal, carcass with moderate to advanced decomposition, or scavenger damage), the City of San Diego shall report the incident to the Chief of the Permits and Conservation Division, Office of Protected Resources, NMFS and the NMFS West Coast Regional Office and/or the West Coast Regional Stranding Coordinator within 24 hours of the discovery. The City of San Diego shall provide photographs or video footage (if available) or other documentation of the stranded animal sighting to NMFS and the Marine Mammal Stranding Network. Activities may continue while NMFS reviews the circumstances of the incident.

Reporting Any Presence of Fur Seals

In the event that the City of San Diego discovers any fur seals hauled out on the rocks or in sand at Children's Pool Beach prior to commencing sand sampling activities for the day, the City of San Diego shall contact the West Coast Regional Stranding Coordinator and sand sampling activities will not commence until the animal(s) either leave or are collected by the stranding network. The City will also report the incident to the Chief of the Permits and Conservation Division, Office of Protected Resources, NMFS within 24 hours of the discovery. The City of San Diego shall provide photographs or video footage (if available) or other documentation of the stranded animal sighting to NMFS and the Marine Mammal Stranding Network. Activities may continue after the animal(s) are no longer present while NMFS reviews the circumstances of the incident.

9. A copy of this Authorization must be in the possession of all contractors and PSOs operating under the authority of this IHA.

Request for Public Comments

NMFS requests comment on our analysis, the draft authorization, and any other aspect of the preliminary determinations and notice of the proposed IHA for the City of San Diego's sand quality study activities at the La Jolla Children's Pool Beach. Please include with your comments any supporting data or literature citations to help inform our final decision on the City of San Diego's request for an MMPA authorization.

Dated: March 29, 2016.

Wanda L. Cain,

Acting Deputy Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2016–07623 Filed 4–1–16; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID: DoD–2016–HA–0032]

Proposed Collection; Comment Request

AGENCY: Office of the Assistant Secretary of Defense for Health Affairs, DoD.

ACTION: Notice.

SUMMARY: In compliance with the *Paperwork Reduction Act of 1995,* the Office of the Assistant Secretary of Defense for Health Affairs announces a proposed extension of a public information collection and seeks public comment on the provisions thereof. Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the

proposed information collection; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

DATES: Consideration will be given to all comments received by June 3, 2016.

ADDRESSES: You may submit comments, identified by docket number and title, by any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Mail:* Department of Defense, Office of the Deputy Chief Management Officer, Directorate of Oversight and Compliance, Regulatory and Audit Matters Office, 9010 Defense Pentagon, Washington, DC 20301–9010.

Instructions: All submissions received must include the agency name, docket number and title for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the Internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

Any associated form(s) for this collection may be located within this same electronic docket and downloaded for review/testing. Follow the instructions at *http://www.regulations.gov* for submitting comments. Please submit comments on any given form identified by docket number, form number, and title.

FOR FURTHER INFORMATION CONTACT: To request more information on this proposed information collection or to obtain a copy of the proposal and associated collection instruments, please write to the Defense Health Agency, TRICARE Overseas Program Office, ATTN: Ms. Kimberly Stakes, 7700 Arlington Boulevard, Suite 5101, Falls Church, VA 22042–5101, or call 703–681–8690.

SUPPLEMENTARY INFORMATION:

Title; Associated Form; and OMB Number: Women, Infants, and Children Overseas Program (WIC Overseas) Eligibility Application: OMB Control Number 0720–0030.

Needs and Uses: The information collection requirement is necessary for individuals to apply for certification and periodic recertification to receive WIC Overseas benefits.

Affected Public: Individuals or Households.

Annual Burden Hours: 7,275.

Number of Respondents: 14,550.

Responses per Respondent: 2.

Total Annual Responses: 29,100.

Average Burden per Response: 15 minutes.

Frequency: Initially and every six months.

Summary of Information Collection

The purpose of the WIC Overseas program is to provide supplemental foods and nutrition education to serve as an adjunct to good health care during critical times of growth and development, in order to prevent the occurrence of health problems, including drug and other substance abuse, and to improve the health status of program participants. The benefit is similar to the benefit provided under the domestic WIC program.

Respondents are individuals who are dependents of members of the armed forces stationed overseas, dependents of a civilian employee of a military department stationed overseas, and DoD contractors and their dependents stationed overseas who desire to receive supplemental food and nutrition education services. To be eligible for the program, a person must meet specific income guidelines. In determining income eligibility, the Department will use the Department of Health and Human Services income poverty table for the state of Alaska.

Dated: March 29, 2016.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2016–07525 Filed 4–1–16; 8:45 am]

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DEPARTMENT OF EDUCATION

Annual Updates to the Income Contingent Repayment (ICR) Plan Formula for 2016—William D. Ford Federal Direct Loan Program

AGENCY: Federal Student Aid, Department of Education.

ACTION: Notice.

Catalog of Federal Domestic Assistance (CFDA) Number: 84.063.

SUMMARY: The Secretary announces the annual updates to the ICR plan formula for 2016, as required by 34 CFR 685.209(b)(1)(ii)(A), to give notice to Direct Loan borrowers and the public regarding how monthly ICR payment amounts will be calculated for the 2016–2017 year.

DATES: The adjustments to the income percentage factors for the ICR plan formula contained in this notice are effective from July 1, 2016, to June 30, 2017, for any borrower who enters the ICR plan or has his or her monthly payment amount recalculated under the ICR plan during that period.

FOR FURTHER INFORMATION CONTACT: Ian Foss, U.S. Department of Education, 830 First Street NE., Room 113H2, Washington, DC 20202. Telephone: (202) 377–3681 or by email: *ian.foss@ed.gov.*

If you use a telecommunications device for the deaf or a text telephone, call the Federal Relay Service, toll free, at 1–800–877–8339.

SUPPLEMENTARY INFORMATION: Under the William D. Ford Federal Direct Loan (Direct Loan) Program, borrowers may choose to repay their non-defaulted loans (Direct Subsidized Loans, Direct Unsubsidized Loans, Direct PLUS Loans made to graduate or professional students, and Direct Consolidation Loans) under the ICR plan. The ICR plan bases the borrower's repayment amount on the borrower's income, family size, loan amount, and the interest rate applicable to each of the borrower's loans.

ICR is one of the income-driven repayment plans. Other income-driven repayment plans include the Income-Based Repayment (IBR) plan, the Pay As You Earn (PAYE) Repayment plan, and the Revised Pay As You Earn (REPAYE) Repayment plan. The IBR, PAYE, and REPAYE plans provide lower payment amounts than the ICR plan for most borrowers.

A Direct Loan borrower who repays his or her loans under the ICR plan pays the lesser of: (1) The amount that he or she would pay over 12 years with fixed payments multiplied by an income percentage factor; or (2) 20 percent of discretionary income.

Each year, to reflect changes in inflation, we adjust the income percentage factor used to calculate a borrower's ICR payment. We use the adjusted income percentage factors to calculate a borrower's monthly ICR payment amount when the borrower initially applies for the ICR plan or when the borrower submits his or her annual income documentation, as required under the ICR plan. This notice contains the adjusted income percentage factors for 2016, examples of how the monthly payment amount in ICR is calculated, and charts showing sample repayment amounts based on the adjusted ICR plan formula. This information is included in the following three attachments:

- *Attachment 1—Income Percentage Factors for 2016*

- *Attachment 2—Examples of the Calculations of Monthly Repayment Amounts*
- *Attachment 3—Charts Showing Sample Repayment Amounts for Single and Married Borrowers*

In Attachment 1, to reflect changes in inflation, we have updated the income percentage factors that were published in the **Federal Register** on March 25, 2015 (80 FR 15757). Specifically, we have revised the table of income percentage factors by changing the dollar amounts of the incomes shown by a percentage equal to the estimated percentage change between the not-seasonally-adjusted Consumer Price Index for all urban consumers for December 2015 and December 2016.

The income percentage factors reflected in Attachment 1 may cause a borrower's payments to be lower than they were in prior years, even if the borrower's income is the same as in the prior year. However, the revised repayment amount more accurately reflects the impact of inflation on the borrower's current ability to repay.

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Attachment 1—Income Percentage Factors for 2016

INCOME PERCENTAGE FACTORS FOR 2016

Single		Married/head of household	
Income	Factor %	Income	Factor %
$11,382	55.00	$11,382	50.52
$15,662	57.79	$17,959	56.68
$20,152	60.57	$21,402	59.56
$24,745	66.23	$27,979	67.79
$29,131	71.89	$34,661	75.22
$34,661	80.33	$43,536	87.61
$43,536	88.77	$54,601	100.00
$54,602	100.00	$65,671	100.00
$65,671	100.00	$82,275	109.40
$78,929	111.80	$109,938	125.00
$101,065	123.50	$148,672	140.60
$143,142	141.20	$207,925	150.00
$164,125	150.00	$339,766	200.00
$292,335	200.00		

Attachment 2—Examples of the Calculations of Monthly Repayment Amounts

General notes about the examples in this attachment:

- We have a calculator that borrowers can use to estimate what their payment amount would be under the ICR plan. The calculator is called the "Repayment Estimator" and is available at *StudentAid.gov/repayment-estimator*. This calculator provides a detailed, individualized assessment of a borrower's loans and repayment plan options, including the ICR plan.
- The interest rates used in the examples are for illustration only. The actual interest rates on an individual borrower's Direct Loans depend on the loan type and when the postsecondary institution first disbursed the Direct Loan to the borrower.
- The Poverty Guideline amounts used in the examples are from the 2016 U.S. Department of Health and Human Services (HHS) Poverty Guidelines for the 48 contiguous States and the District of Columbia. Different Poverty Guidelines apply to residents of Alaska and Hawaii. The Poverty Guidelines for 2016 were published in the **Federal Register** on January 25, 2016 (81 FR 4036).
- All of the examples use an income percentage factor corresponding to an adjusted gross income (AGI) in the table in Attachment 1. If your AGI is not listed in the income percentage factors table in Attachment 1, calculate the applicable income percentage by following the instructions under the "Interpolation" heading later in this attachment.
- Married borrowers may repay their Direct Loans jointly under the ICR plan. If a married couple elects this option, we add the outstanding balance on the Direct Loans of each borrower and we add together both borrowers' AGIs to determine a joint ICR payment amount. We then prorate the joint payment amount for each borrower based on the proportion of that borrower's debt to the total outstanding balance. We bill each borrower separately.
- For example, if a married couple, John and Sally, has a total outstanding Direct Loan debt of $60,000, of which $40,000 belongs to John and $20,000 to Sally, we would apportion 67 percent of the monthly ICR payment to John and the remaining 33 percent to Sally. To take advantage of a joint ICR payment, married couples need not file taxes jointly; they may file separately and subsequently provide the other spouse's tax information to the borrower's Federal loan servicer.

Calculating the Monthly Payment Amount Using a Standard Amortization and a 12-Year Repayment Period

The formula to amortize a loan with a standard schedule (in which each payment is the same over the course of the repayment period) is as follows:

$$M = P \times < (I \div 12) \div [1 - \{1 + (I \div 12)\} \wedge\!-N] >$$

In the formula—

- M is the monthly payment amount;
- P is the outstanding principal balance of the loan at the time the calculation is performed;
- I is the annual interest rate on the loan, expressed as a decimal (for example, for a loan with an interest rate of 6 percent, 0.06); and
- N is the total number of months in the repayment period (for example, for a loan with a 12-year repayment period, 144 months).

For example, assume that Billy has a $10,000 Direct Unsubsidized Loan with an interest rate of 6 percent.

Step 1: To solve for M, first simplify the numerator of the fraction by which we multiply P, the outstanding principal balance. To do this divide I, the interest rate, as a decimal, by 12. In this example, Billy's interest rate is 6 percent. As a decimal, 6 percent is 0.06.

- $0.06 \div 12 = 0.005$

Step 2: Next, simplify the denominator of the fraction by which we multiply P. To do this divide I, the interest rate, as a decimal, by 12. Then, add one. Next, raise the sum of the two figures to the negative power that corresponds to the length of the repayment period in months. In this example, because we are amortizing a loan to calculate the monthly payment amount under the ICR plan, the applicable figure is 12 years, which is 144 months. Finally, subtract the result from one.

- 0.06 ÷ 12 = 0.005
- 1 + 0.005 = 1.005
- 1.005 ∧ −144 = 0.48762628
- 1 − 0.48762628 = 0.51237372

Step 3: Next, resolve the fraction by dividing the result from step one by the result from step two.

- 0.005 ÷ 0.51237372 = 0.0097585

Step 4: Finally, solve for M, the monthly payment amount, by multiplying the outstanding principal balance of the loan by the result of step 3.

- $10,000 × 0.0097585 = $97.59

The remainder of the examples in this attachment will only show the results of the formula.

Example 1. Brenda is single with no dependents and has $15,000 in Direct Subsidized and Unsubsidized Loans. The interest rate on Brenda's loans is 6 percent, and she has an AGI of $29,131.

Step 1: Determine the total monthly payment amount based on what Brenda would pay over 12 years using standard amortization. To do this, use the formula that precedes Example 1. In this example, the monthly payment amount would be $146.38.

Step 2: Multiply the result of Step 1 by the income percentage factor shown in the income percentage factors table (see Attachment 1 to this notice) that corresponds to Brenda's AGI. In this example, an AGI of $29,131 corresponds to an income percentage factor of 71.89 percent.

- 0.7189 × $146.38 = $105.23

Step 3: Determine 20 percent of Brenda's discretionary income and divide by 12 (discretionary income is AGI minus the HHS Poverty Guideline amount for a borrower's family size and State of residence). For Brenda, subtract the Poverty Guideline amount for a family of one from her AGI, multiply the result by 20 percent, and then divide by 12:

- $29,131 − $11,880 = $17,251
- $17,251 × 0.20 = $3,450.20
- $3,450.20 ÷ 12 = $287.52

Step 4: Compare the amount from Step 2 with the amount from Step 3. The lower of the two will be the monthly ICR payment amount. In this example, Brenda will be paying the amount calculated under Step 2 ($105.23).

Note: Brenda would have a lower payment under other income-driven repayment plans. Specifically, Brenda's payment would be $89.31 under the PAYE and REPAYE repayment plans. However, Brenda's payment would be $133.96 under the IBR plan, which is higher than the payment she would have under the ICR plan.

Example 2. Joseph is married to Susan and has no dependents. They file their Federal income tax return jointly. Joseph has a Direct Loan balance of $10,000, and Susan has a Direct Loan balance of $15,000. The interest rate on all of the loans is 6 percent.

Joseph and Susan have a combined AGI of $82,275 and are repaying their loans jointly under the ICR plan (for general information regarding joint ICR payments for married couples, see the fifth and sixth bullets under the heading "General notes about the examples in this attachment").

Step 1: Add Joseph's and Susan's Direct Loan balances to determine their combined aggregate loan balance:

- $10,000 + $15,000 = $25,000

Step 2: Determine the combined monthly payment amount for Joseph and Susan based on what both borrowers would pay over 12 years using standard amortization. To do this, use the formula that precedes Example 1. In this example, the combined monthly payment amount would be $243.96.

Step 3: Multiply the result of Step 2 by the income percentage factor shown in the income percentage factors table (see Attachment 1 to this notice) that corresponds to Joseph and Susan's combined AGI. In this example, the combined AGI of $82,275 corresponds to an income percentage factor of 109.40 percent.

- 1.094 × $243.96 = $266.90

Step 4: Determine 20 percent of Joseph and Susan's combined discretionary income (discretionary income is AGI minus the HHS Poverty Guideline amount for a borrower's family size and State of residence). To do this subtract the Poverty Guideline amount for a family of two from the combined AGI, multiply the result by 20 percent, and divide by 12:

- $82,275 − $ 16,020 = $66,225
- $66,225 × 0.20 = $13,251
- $13,251 ÷ 12 = $1,104.25

Step 5: Compare the amount from Step 3 with the amount from Step 4. The lower of the two will be Joseph and Susan's joint monthly payment amount. Joseph and Susan will jointly pay the amount calculated under Step 3 ($266.90).

Note: For Joseph and Susan, the Income-Contingent Repayment plan provides the lowest monthly payment of all of the income-driven repayment plans. Joseph and Susan would not be eligible for the IBR or Pay As You Earn Repayment plans, and would have a combined monthly payment under the REPAYE Repayment plan of $485.38.

Step 6: Because Joseph and Susan are jointly repaying their Direct Loans under the ICR plan, the monthly payment amount calculated under Step 5 applies to both Joseph's and Susan's loans. To determine the amount for which each borrower will be responsible, prorate the amount calculated under Step 4 by each spouse's share of the combined Direct Loan debt. Joseph has a Direct Loan debt of $10,000 and Susan has a Direct Loan Debt of $15,000. For Joseph, the monthly payment amount will be: • $10,000 ÷ ($10,000 + $15,000) = 40 percent

- 0.40 × $266.90 = $106.76

For Susan, the monthly payment amount will be:

- $15,000 ÷ ($10,000 + $15,000) = 60 percent
- 0.60 × $266.90 = $160.14

Example 3. David is single with no dependents and has $60,000 in Direct Subsidized and Unsubsidized Loans. The interest rate on all of the loans is 6 percent, and David's AGI is $34,661.

Step 1: Determine the total monthly payment amount based on what David would pay over 12 years using standard amortization. To do this, use the formula that precedes Example 1. In this example, the monthly payment amount would be $585.51.

Step 2: Multiply the result of Step 1 by the income percentage factor shown in the income percentage factors table (see Attachment 1 to this notice) that corresponds to David's AGI. In this example, an AGI of $34,661 corresponds to an income percentage factor of 80.33 percent.

- 0.8033 × $585.51 = $470.34

Step 3: Determine 20 percent of David's discretionary income and divide by 12 (discretionary income is AGI minus the HHS Poverty Guideline amount for a borrower's family size and State of residence). To do this subtract the Poverty Guideline amount for a family of one from David's AGI, multiply the result by 20 percent, then divide by 12:

- $34,661 − $11,880 = $22,781
- $22,781 × 0.20 = $4,556.20
- $4,556.20 ÷ 12 = $379.68

Step 4: Compare the amount from Step 2 with the amount from Step 3. The lower of the two will be David's monthly payment amount. In this example, David will be paying the amount calculated under Step 3 ($379.68).

Note: David would have a lower payment under each of the other income-driven plans. Specifically, David's payment would be $140.34 under the PAYE and REPAYE repayment plans and $210.51 under the IBR plan.

Interpolation. If an income is not included on the income percentage factor table, calculate the income percentage factor through linear interpolation. For example, assume that Joan is single with an income of $50,000.

Step 1: Find the closest income listed that is less than Joan's income ($50,000) and the closest income listed that is greater than Joan's income ($50,000).

Step 2: Subtract the lower amount from the higher amount (for this discussion we will call the result the "income interval"):

- $54,602 − $43,536 = $11,066

Step 3: Determine the difference between the two income percentage factors that correspond to the incomes used in Step 2 (for this discussion, we will call the result the "income percentage factor interval"):

- 100.00 percent − 88.77 percent = 11.23 percent

Step 4: Subtract from Joan's income the closest income shown on the chart that is less than Joan's income of $50,000:

- $50,000 − $43,536 = $6,464

Step 5: Divide the result of Step 4 by the income interval determined in Step 2:

- $6,464 ÷ $11,066 = 58.41 percent

Step 6: Multiply the result of Step 5 by the income percentage factor interval:

- 11.23 percent × 58.41 percent = 6.56 percent

Step 7: Add the result of Step 6 to the lower of the two income percentage factors used in Step 3 to calculate the income percentage factor interval for $50,000 in income:

- 6.56 percent + 88.77 percent = 95.33 percent (rounded to the nearest hundredth)

The result is the income percentage factor that we will use to calculate Joan's monthly repayment amount under the ICR plan.

Attachment 3—Charts Showing Sample Income-Driven Repayment Amounts for Single and Married Borrowers

Below are two charts that provide first-year payment amount estimates for a variety of loan debt sizes and incomes under all of the income-driven repayment plans. The first chart is for single borrowers who have a family size of one. The second chart is for a borrower who is married or a head of household and who has a family size of three. The ICR plan calculations assume that the loan debt has an interest rate of 6 percent. For married borrowers, the calculations assume that the borrower files a joint Federal income tax return with his or her spouse. A field with a "–" character indicates that the borrower in the example would not be eligible to enter the applicable repayment based plan based on the borrower's income, loan debt, and family size.

SAMPLE FIRST-YEAR MONTHLY REPAYMENT AMOUNTS FOR A SINGLE BORROWER

Income	Plan	Family size = 1				
		Initial debt				
		$20,000	$40,000	$60,000	$80,000	$100,000
$20,000	ICR	$118	$167	$195	$219	$240
	IBR	27	—	—	—	—
	PAYE	18	185	—	—	—
	REPAYE	18	185	352	518	685
$40,000	ICR	135	333	390	439	480
	IBR	27	277	—	—	—
	PAYE	18	185	352	—	—
	REPAYE	18	185	352	518	685
$60,000	ICR	135	469	586	658	720
	IBR	27	277	527	—	—
	PAYE	18	185	352	518	—
	REPAYE	18	185	352	518	685
$80,000	ICR	135	469	781	877	960
	IBR	27	277	527	777	—
	PAYE	18	185	352	518	685
	REPAYE	18	185	352	518	685
$100,000	ICR	135	469	802	1,097	1,200
	IBR	27	277	527	777	1,027
	PAYE	18	185	352	518	685
	REPAYE	18	185	352	518	685

SAMPLE FIRST-YEAR MONTHLY REPAYMENT AMOUNTS FOR A MARRIED OR HEAD-OF-HOUSEHOLD BORROWER

Income	Plan	Family size = 3				
		Initial debt				
		$20,000	$40,000	$60,000	$80,000	$100,000
$20,000	ICR	$0	$161	$195	$211	$233
	IBR	0	122	—	—	—
	PAYE	0	81	—	—	—
	REPAYE	0	81	248	415	581
$40,000	ICR	0	323	390	422	466
	IBR	0	122	372	—	—
	PAYE	0	81	248	415	—
	REPAYE	0	81	248	415	581
$60,000	ICR	0	331	586	633	699
	IBR	0	122	372	622	—
	PAYE	0	81	248	415	581
	REPAYE	0	81	248	415	581
$80,000	ICR	0	331	664	844	932
	IBR	0	122	372	622	872
	PAYE	0	81	248	415	581
	REPAYE	0	81	278	415	581
$100,000	ICR	0	469	664	997	1,165
	IBR	0	277	372	622	872
	PAYE	0	185	248	415	581
	REPAYE	0	185	248	415	581

Program Authority: 20 U.S.C. 1087 *et seq.*

Dated: March 29, 2016.

James W. Runcie,

Chief Operating Officer, Federal Student Aid.

[FR Doc. 2016–07517 Filed 4–1–16; 8:45 am]

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DEPARTMENT OF EDUCATION

Deadline Dates for Reports and Other Records Associated With the Free Application for Federal Student Aid (FAFSA®), the Federal Pell Grant Program, the William D. Ford Federal Direct Loan Program, the Teacher Education Assistance for College and Higher Education Grant Program, and the Iraq and Afghanistan Service Grant Program for the 2016–2017 Award Year

AGENCY: Federal Student Aid, Department of Education.

ACTION: Notice.

Catalog Federal Domestic Assistance (CFDA) Numbers: 84.007 Federal Supplemental Educational Opportunity Grant (FSEOG) Program; 84.033 Federal Work Study (FWS) Program; 84.038 Federal Perkins Loan (Perkins Loan) Program; 84.063 Federal Pell Grant (Pell Grant) Program; 84.268 William D. Ford Federal Direct Loan (Direct Loan) Program; 84.379 Teacher Education Assistance for College and Higher Education (TEACH) Grant Program; 84.408 Iraq and Afghanistan Service Grant Program.

SUMMARY: The Secretary announces deadline dates for the receipt of documents and other information from applicants and institutions participating in certain Federal student aid programs authorized under title IV of the Higher Education Act of 1965, as amended (HEA), for the 2016–2017 award year. The Federal student aid programs covered by this deadline date notice are the Pell Grant, Direct Loan, TEACH Grant, and Iraq and Afghanistan Service Grant programs. The FSEOG, FWS, and Perkins Loan programs are only covered by this deadline date notice to the extent that a student receiving FSOEG, FWS, or Perkins Loan funds must submit a FAFSA, to the extent that the institution must receive the student's Institutional Student Information Record (ISIR) or Student Aid Report (SAR) for students requesting those funds, or to the extent that the institution must submit verification outcomes for students requesting those funds.

These programs, administered by the U.S. Department of Education (Department), provide financial assistance to students attending eligible postsecondary educational institutions to help them pay their educational costs.

DATES: *Deadline and Submission Dates:* See Tables A and B at the end of this notice.

Table A—Deadline Dates by Which a Student Must Submit the FAFSA, by Which the Institution Must Receive the Student's Institutional Student Information Record (ISIR) or Student Aid Report (SAR), and by Which the Institution Must Submit Verification Outcomes for Certain Students for the 2016–2017 Award Year

Table A provides information and deadline dates for receipt of the FAFSA, corrections to and signatures for the FAFSA, ISIRs, and SARs, and verification documents.

The deadline date for the receipt of a FAFSA by the Department's Central Processing System is June 30, 2017, regardless of the method that the applicant uses to submit the FAFSA. The deadline date for the receipt of a signature page for the FAFSA (if required), correction, notice of change of address or school, or request for a duplicate SAR is September 9, 2017.

For all Federal student aid programs, an ISIR or SAR for the student must be received by the institution no later than the student's last date of enrollment for the 2016–2017 award year or September 23, 2017, whichever is earlier. As a reminder, a FAFSA must be submitted for the dependent student for whom a parent is applying for a Direct PLUS Loan.

Verification documents must be received by the institution no later than 120 days after the student's last date of enrollment for the 2016–2017 award year or September 23, 2017, whichever is earlier.

For all Federal student aid programs except for (1) Direct PLUS Loans that will be made to parent borrowers, and (2) Direct Unsubsidized Loans that will be made to dependent students who have been determined by the institution, pursuant to section 479A(a) of the HEA, to be eligible for such a loan without providing parental information on the FAFSA, the ISIR or SAR must have an official expected family contribution (EFC) and must be received by the institution no later than the earlier of the student's last date of enrollment for the 2016–2017 award year or September 23, 2017.

For a student who is requesting aid through the Pell Grant, FSEOG, FWS, and Federal Perkins Loan programs or for a student requesting Direct Subsidized Loans, who does not meet the conditions for a late disbursement under 34 CFR 668.164(g), a valid ISIR or valid SAR must be received by the student's last date of enrollment for the 2016–2017 award year or September 23, 2017, whichever is earlier.

In accordance with 34 CFR 668.164(g)(4)(i), an institution may not make a late disbursement of title IV student assistance funds later than 180 days after the date of the institution's determination that the student was no longer enrolled. Table A provides that, to make a late disbursement of title IV student assistance funds, an institution must receive a valid ISIR or valid SAR no later than 180 days after its determination that the student was no longer enrolled, but not later than September 23, 2017.

Table B—Pell Grant, Iraq and Afghanistan Service Grant, Direct Loan, and TEACH Grant Programs' Deadline Dates for Disbursement Information by Institutions for the 2016–2017 Award Year or Processing Year

Table B provides the earliest and latest dates for institutions to submit Pell Grant, Iraq and Afghanistan Service Grant, Direct Loan, and TEACH Grant disbursement records to the Department's Common Origination and Disbursement (COD) System and deadline dates for such records if an institution requests and receives approval to submit such records after the established deadline.

An institution must submit Pell Grant, Iraq and Afghanistan Service Grant, Direct Loan, and TEACH Grant disbursement records to COD, as applicable, no later than 15 days after making the disbursement or becoming aware of the need to adjust a previously reported disbursement. In accordance with 34 CFR 668.164(a), title IV funds are disbursed on the date that the institution: (a) Credits those funds to a student's account in the institution's general ledger or any subledger of the general ledger; or (b) pays those funds to a student directly. Title IV funds are disbursed even if an institution uses its own funds in advance of receiving program funds from the Secretary.

An institution's failure to submit disbursement records within the required timeframe may result in the Secretary rejecting all or part of the reported disbursement. Such failure may also result in an audit or program review finding or the initiation of an adverse action, such as a fine or other penalty for such failure, in accordance with subpart G of the General Provisions regulations in 34 CFR part 668.

Other Sources for Detailed Information

We publish a detailed discussion of the Federal student aid application process in the 2016–2017 *Federal*

Student Aid Handbook and in the 2016–2017 *ISIR Guide.*

Additional information on the institutional reporting requirements for the Pell Grant, Iraq and Afghanistan Service Grant, Direct Loan, and TEACH Grant programs is included in the 2016–2017 *Common Origination and Disbursement (COD) Technical Reference.*

You may access these publications by selecting the "iLibrary" link at the Information for Financial Aid Professionals Web site at: *www.ifap.ed.gov.*

Applicable Regulations: The following regulations apply:

(1) Student Assistance General Provisions, 34 CFR part 668.

(2) Federal Pell Grant Program, 34 CFR part 690.

(3) William D. Ford Direct Loan Program, 34 CFR part 685.

(4) Teacher Education Assistance for College and Higher Education Grant Program, 34 CFR part 686.

FOR FURTHER INFORMATION CONTACT: Ian Foss, U.S. Department of Education, Federal Student Aid, 830 First Street NE., Union Center Plaza, Room 113H2, Washington, DC 20202–5345. Telephone: (202) 377–3681 or by email: *ian.foss@ed.gov.*

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Program Authority: 20 U.S.C. 1070a, 1070a–1, 1070b–1070b–4, 1070g, 1070h, 1087a–1087j, and 1087aa–1087ii; 42 U.S.C. 2751–2756b.

Dated: March 29, 2016.

James W. Runcie,

Chief Operating Officer, Federal Student Aid.

TABLE A—DEADLINE DATES BY WHICH A STUDENT MUST SUBMIT THE FAFSA, BY WHICH THE INSTITUTION MUST RECEIVE THE STUDENT'S INSTITUTIONAL STUDENT INFORMATION RECORD (ISIR) OR STUDENT AID REPORT (SAR), AND BY WHICH THE INSTITUTION MUST SUBMIT VERIFICATION OUTCOMES FOR CERTAIN STUDENTS FOR THE 2016–2017 AWARD YEAR

Who submits?	What is submitted?	Where is it submitted?	What is the deadline date for receipt?
Student	FAFSA—"FAFSA on the Web" (original or renewal).	Electronically to the Department's Central Processing System (CPS).	June 30, 2017 [1].
	Signature page (if required)	To the address printed on the signature page	September 9, 2017.
Student through an Institution.	An electronic FAFSA (original or renewal)	Electronically to the Department's CPS using the "Electronic Data Exchange" (EDE) or "FAA Access to CPS Online".	June 30, 2017 [1].
Student	A paper original FAFSA	To the address printed on the FAFSA or envelope provided with the form.	June 30, 2017.
Student	Electronic corrections to the FAFSA using "Corrections on the Web".	Electronically to the Department's CPS	September 9, 2017 [1].
	Signature page (if required)	To the address printed on the signature page	September 9, 2017.
Student through an Institution.	Electronic corrections to the FAFSA	Electronically to the Department's CPS using the EDE or "FAA Access to CPS Online".	September 9, 2017 [1].
Student	Paper corrections to the FAFSA using a SAR, including change of mailing and email addresses and change of institutions.	To the address printed on the SAR	September 9, 2017.
Student	Change of mailing and email addresses, change of institutions, or requests for a duplicate SAR.	To the Federal Student Aid Information Center by calling 1–800–433–3243.	September 9, 2017.
Student	An ISIR with an official EFC calculated by the Department's CPS, except for Parent PLUS Loans and Direct Unsubsidized Loans made to a dependent student under HEA section 479A(a), for which the ISIR does not need to have an official EFC.	To the institution	The earlier of: —The student's last date of enrollment for the 2016–2017 award year; or —September 23, 2017 [2].
Student through CPS	An ISIR with an official EFC calculated by the Department's CPS, except for Parent PLUS Loans and Direct Unsubsidized Loans made to a dependent student under HEA section 479A(a), for which the ISIR does not need to have an official EFC.	To the institution from the Department's CPS	The earlier of: —The student's last date of enrollment for the 2016–2017 award year; or —September 23, 2017 [2].
Student Student through CPS	Valid SAR (Pell Grant, FSEOG, FWS, Perkins Loan, and Direct Subsidized Loans). Valid ISIR (Pell Grant, FSEOG, FWS, Perkins Loan, and Direct Subsidized Loans).	To the institution To the institution from the Department's CPS	Except for a student meeting the conditions for a late disbursement under 34 CFR 668.164(g), the earlier of: —The student's last date of enrollment for the 2016–2017 award year; or —September 23, 2017 [2].
Student Student through CPS	Valid SAR (Pell Grant, FSEOG, FWS, Perkins Loan, and Direct Subsidized Loans). Valid ISIR (Pell Grant, FSEOG, FWS, Perkins Loan, and Direct Subsidized Loans).	To the institution To the institution from the Department's CPS	For a student receiving a late disbursement under 34 CFR 668.164(g)(4)(i), the earlier of: —180 days after the date of the institution's determination that the student withdrew or otherwise became ineligible; or — September 23, 2017 [2].

Table A—Deadline Dates by Which a Student Must Submit the FAFSA, by Which the Institution Must Receive the Student's Institutional Student Information Record (ISIR) or Student Aid Report (SAR), and by Which the Institution Must Submit Verification Outcomes for Certain Students for the 2016–2017 Award Year—Continued

Who submits?	What is submitted?	Where is it submitted?	What is the deadline date for receipt?
Student	Verification documents	To the institution	The earlier of:[3] —120 days after the student's last date of enrollment for the 2016–2017 award year; or —September 23, 2017[2].
Institution	Identity and high school completion verification results for a student selected for verification by the Department and placed in Verification Tracking Group V4 or V5.	Electronically to the Department's CPS using "FAA Access to CPS Online".	60 days following the institution's first request to the student to submit the required V4 or V5 identity and high school completion documentation[4].

[1] The deadline for electronic transactions is 11:59 p.m. (Central Time) on the deadline date. Transmissions must be completed and accepted before 12:00 midnight to meet the deadline. If transmissions are started before 12:00 midnight but are not completed until after 12:00 midnight, those transmissions do not meet the deadline. In addition, any transmission submitted on or just prior to the deadline date that is rejected may not be reprocessed because the deadline will have passed by the time the user gets the information notifying him or her of the rejection.

[2] The date the ISIR/SAR transaction was processed by CPS is considered to be the date the institution received the ISIR or SAR regardless of whether the institution has downloaded the ISIR from its Student Aid Internet Gateway (SAIG) mailbox or when the student submits the SAR to the institution.

[3] Although the Secretary has set this deadline date for the submission of verification documents, if corrections are required, deadline dates for submission of paper or electronic corrections and, for Pell Grant applicants and applicants selected for verification, deadline dates for the submission of a valid SAR or valid ISIR to the institution must still be met. An institution may establish an earlier deadline for the submission of verification documents for purposes of the campus-based programs and the Direct Loan Program, but it cannot be later than this deadline date.

[4] Note that changes to previously submitted Identity Verification Results must be updated within 30 days.

Table B—Pell Grant, Iraq and Afghanistan Service Grant, Direct Loan, and TEACH Grant Programs Deadline Dates for Disbursement Information by Institutions for the 2016–2017 Award Year or Processing Year[1]

Which program?	What is submitted?	Under what circumstances is it submitted?	Where is it submitted?	What are the deadlines for disbursement and for submission of records and information?
Pell Grant, Direct Loan, TEACH Grant, and Iraq and Afghanistan Service Grant programs.	An origination or disbursement record.	The institution has made or intends to make a disbursement.	To the Common Origination and Disbursement (COD) System using the Student Aid Internet Gateway (SAIG); or to the COD System using the COD Web site at: *www.cod.ed.gov.*	The earliest disbursement date is January 29, 2016. The earliest submission date for anticipated disbursement information is March 14, 2016. The earliest submission date for actual disbursement information is March 14, 2016, but no earlier than: (a) 7 calendar days prior to the disbursement date under the advance payment method or the cash monitoring number one payment method; or (b) The disbursement date under the reimbursement or cash monitoring number two payment method
Pell Grant, Iraq and Afghanistan Service Grant, and TEACH Grant programs.	An origination or disbursement record.	The institution has made a disbursement and will submit records on or before the deadline submission date.	To COD using SAIG; or to COD using the COD Web site at: *www.cod.ed.gov.*	The deadline submission date[2] is the earlier of: (a) 15 calendar days after the institution makes a disbursement or becomes aware of the need to make an adjustment to previously reported disbursement data, except that records for disbursements made between January 29, 2016 and March 14, 2016 must be submitted no later than March 29, 2016; or (b) September 29, 2017

TABLE B—PELL GRANT, IRAQ AND AFGHANISTAN SERVICE GRANT, DIRECT LOAN, AND TEACH GRANT PROGRAMS DEADLINE DATES FOR DISBURSEMENT INFORMATION BY INSTITUTIONS FOR THE 2016–2017 AWARD YEAR OR PROCESSING YEAR [1]—Continued

Which program?	What is submitted?	Under what circumstances is it submitted?	Where is it submitted?	What are the deadlines for disbursement and for submission of records and information?
Direct Loan Program	An origination or disbursement record.	The institution has made a disbursement and will submit records on or before the deadline submission date..	To COD using SAIG; or to COD using the COD Web site at: *www.cod.ed.gov.*.	The deadline submission date [2] is the earlier of: (a) 15 calendar days after the institution makes a disbursement or becomes aware of the need to make an adjustment to previously reported disbursement data, except that records of disbursements made between January 1, 2016, and March 30, 2016, may be submitted no later than March 29, 2016; or (b) July 31, 2018.
Pell Grant and Iraq and Afghanistan Service Grant programs.	A downward adjustment to an origination or disbursement record.	It is after the deadline submission date.	To COD using SAIG; or to COD using the COD Web site at: *www.cod.ed.gov.*	No later than September 30, 2022.
Pell Grant, Iraq and Afghanistan Service Grant programs.	An origination or disbursement record.	It is after the deadline submission date and the institution has received approval of its request for an extension to the deadline submission date. Requests for extensions to the established submission deadlines may be made for reasons, including, but not limited to:.	Via the COD Web site at: .... *www.cod.ed.gov*	The earlier of: (a) When the institution is fully reconciled and is ready to submit all additional data for the program and the award year; or (b) September 30, 2022.
TEACH Grant and Direct Loan programs.		(a) A program review or initial audit finding under 34 CFR 690.83;. (b) A late disbursement under 34 CFR 668.164(g); or. (c) Disbursements previously blocked as a result of another institution failing to post a downward adjustment.		When the institution is fully reconciled and is ready to submit all additional data for the program and the award year.
Pell Grant and Iraq and Afghanistan Service Grant programs.	An origination or disbursement record.	It is after the deadline submission date and the institution has received approval of its request for an extension to the deadline submission date based on a natural disaster, other unusual circumstances, or an administrative error made by the Department.	Via the COD Web site at: .... *www.cod.ed.gov*	The earlier of: (a) A date designated by the Secretary after consultation with the institution; or (b) February 1, 2018.
	An origination or disbursement record.	It is after the deadline submission date and the institution has received approval of its request for administrative relief to extend the deadline submission date based on a student's reentry to the institution within 180 days after initially withdrawing [3].	Via the COD Web site at: .... *www.cod.ed.gov*	The earlier of: (a) 15 days after the student reenrolls; or (b) May 3, 2018.

[1] A COD Processing Year is a period of time in which institutions are permitted to submit Direct Loan records to the COD System that are related to a given award year. For a Direct Loan, the period of time includes loans that have a loan period covering any day in the 2016–2017 award year.

[2] Transmissions must be completed and accepted before the designated processing time on the deadline submission date. The designated processing time is published annually via an electronic announcement posted to the Information for Financial Aid Professionals Web site (www.ifap.ed.gov). If transmissions are started at the designated time, but are not completed until after the designated time, those transmissions will not meet the deadline. In addition, any transmission submitted on or just prior to the deadline date that is rejected may not be reprocessed because the deadline will have passed by the time the user gets the information notifying him or her of the rejection.

[3] Applies only to students enrolled in clock-hour and nonterm credit-hour educational programs.

NOTE: The COD System must accept origination data for a student from an institution before it accepts disbursement information from the institution for that student. Institutions may submit origination and disbursement data for a student in the same transmission. However, if the origination data is rejected, the disbursement data is rejected.

[FR Doc. 2016–07510 Filed 4–1–16; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

[Docket No.: ED–2016–ICCD–0039]

Agency Information Collection Activities; Comment Request; Teacher Follow-Up Survey (TFS 2016–17) to the National Teacher and Principal Survey (NTPS 2015–16)

AGENCY: National Center for Education Statistics (NCES), Department of Education (ED).

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 3501 *et seq.*), ED is proposing a reinstatement of a previously approved information collection.

DATES: Interested persons are invited to submit comments on or before June 3, 2016.

ADDRESSES: To access and review all the documents related to the information collection listed in this notice, please use *http://www.regulations.gov* by searching the Docket ID number ED–2016–ICCD–0039. Comments submitted in response to this notice should be submitted electronically through the Federal eRulemaking Portal at *http://www.regulations.gov* by selecting the Docket ID number or via postal mail, commercial delivery, or hand delivery. *Please note that comments submitted by fax or email and those submitted after the comment period will not be accepted.* Written requests for information or comments submitted by postal mail or delivery should be addressed to the Director of the Information Collection Clearance Division, U.S. Department of Education, 400 Maryland Avenue SW., LBJ, Room 2E–105, Washington, DC 20202–4537.

FOR FURTHER INFORMATION CONTACT: For specific questions related to collection activities, please contact Kashka Kubzdela at *kashka.kubzdela@ed.gov.*

SUPPLEMENTARY INFORMATION: The Department of Education (ED), in accordance with the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3506(c)(2)(A)), provides the general public and Federal agencies with an opportunity to comment on proposed, revised, and continuing collections of information. This helps the Department assess the impact of its information collection requirements and minimize the public's reporting burden. It also helps the public understand the Department's information collection requirements and provide the requested data in the desired format. ED is soliciting comments on the proposed information collection request (ICR) that is described below. The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology. Please note that written comments received in response to this notice will be considered public records.

Title of Collection: Teacher Follow-up Survey (TFS 2016–17) to the National Teacher and Principal Survey (NTPS 2015–16).

OMB Control Number: 1850–0617.

Type of Review: A reinstatement of a previously approved information collection.

Respondents/Affected Public: Individuals.

Total Estimated Number of Annual Responses: 13,213.

Total Estimated Number of Annual Burden Hours: 3,133.

Abstract: This request is to conduct data collection for the 2016–17 Teacher Follow-up Survey (TFS), a one-year follow up of a subsample of teachers who responded to the 2015–2016 National Teacher and Principal Survey (NTPS). TFS is conducted by the National Center for Education Statistics (NCES), of the Institute of Education Sciences (IES), within the U.S. Department of Education (ED). The TFS has been conducted seven times previously beginning in 1988–89 as a follow up to the first administration of the Schools and Staffing Survey (SASS) in 1987–88. It was subsequently administered as a follow up to SASS in 1991–92, 1994–95, 2000–2001, 2004–2005, 2008–2009, and, most recently, 2012–2013 (OMB# 1850–0598 v.9). During the 2015–16 school year, NCES conducted the first NTPS (OMB #1850–0598 v.11), a redesign of SASS to improve the flexibility, efficiency, and timeliness of NCES data on the nation's K–12 schools, principals, and teachers. While NTPS data will now be collected every two years, the TFS will remain on a four-year cycle, with its next administration in 2020–21. The 2016–17 TFS will be the first to launch from the redesigned NTPS.

Dated: March 30, 2016.

Stephanie Valentine,

Acting Director, Information Collection Clearance Division, Office of the Chief Privacy Officer, Office of Management.

[FR Doc. 2016–07621 Filed 4–1–16; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board Chairs

AGENCY: Department of Energy.

ACTION: Notice of Open Meeting.

SUMMARY: This notice announces a meeting of the Environmental Management Site-Specific Advisory Board (EM SSAB) Chairs. The Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770) requires that public notice of this meeting be announced in the **Federal Register**.

DATES: Wednesday, April 20, 2016 8:00 a.m.–5:00 p.m., Thursday, April 21, 2016 8:00 a.m.–12:30 p.m.

ADDRESSES: Doubletree Hotel, 215 South Illinois Avenue Oak Ridge, Tennessee 37830.

FOR FURTHER INFORMATION CONTACT: David Borak, Designated Federal Officer, U.S. Department of Energy, 1000 Independence Avenue SW., Washington, DC 20585; Phone: (202) 586–9928.

SUPPLEMENTARY INFORMATION: Purpose of the Board: The purpose of the Board is to make recommendations to DOE–EM and site management in the areas of environmental restoration, waste management, and related activities.

Tentative Agenda Topics:

Wednesday, April 20, 2016
- ○ EM Program Update
- ○ EM SSAB Chairs' Round Robin: Topics, Achievements, and Accomplishments
- ○ Waste Disposition
- ○ Communications and External Affairs
- ○ Public Comment Period

Thursday, April 21, 2016
- ○ DOE Headquarters News and Views
- ○ Site Restoration
- ○ Panel Discussion: Reindustrialization and Land Use
- ○ Public Comment

Public Participation: The EM SSAB Chairs welcome the attendance of the public at their advisory committee meetings and will make every effort to accommodate persons with physical disabilities or special needs. If you require special accommodations due to a disability, please contact David Borak at least seven days in advance of the meeting at the phone number listed above. Written statements may be filed either before or after the meeting with the Designated Federal Officer, David Borak, at the address or telephone listed above. Individuals who wish to make oral statements pertaining to agenda items should also contact David Borak. Requests must be received five days prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The Designated Federal Officer is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Individuals wishing to make public comment will be provided a maximum of five minutes to present their comments.

Minutes: Minutes will be available by writing or calling David Borak at the address or phone number listed above. Minutes will also be available at the following Web site: *http://www.em.doe.gov/stakepages/ssabchairs.aspx.*

Issued at Washington, DC, on March 29, 2016.

LaTanya R. Butler,

Deputy Committee Management Officer.

[FR Doc. 2016–07642 Filed 4–1–16; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Proposed Subsequent Arrangement

AGENCY: Office of Nonproliferation and Arms Control, Department of Energy.

ACTION: Proposed subsequent arrangement.

SUMMARY: This document is being issued under the authority of the Atomic Energy Act of 1954, as amended. The Department is providing notice of a proposed subsequent arrangement under the Agreement for Cooperation Concerning Civil Uses of Nuclear Energy Between the Government of the United States of America and the Government of Canada and the Agreement for Cooperation in the Peaceful Uses of Nuclear Energy Between the United States of America and the European Atomic Energy Community.

DATES: This subsequent arrangement will take effect no sooner than April 19, 2016.

FOR FURTHER INFORMATION CONTACT: Ms. Katie Strangis, Office of Nonproliferation and Arms Control, National Nuclear Security Administration, Department of Energy. Telephone: 202–586–8623 or email: *Katie.Strangis@nnsa.doe.gov.*

SUPPLEMENTARY INFORMATION: This subsequent arrangement concerns the retransfer of 591,716 kg of U.S.-origin natural uranium hexafluoride (UF6) (67.6% U), 400,000 kg of which is uranium, from Cameco Corporation (Cameco) in Saskatoon, Saskatchewan, to URENCO Deutschland GmbH in Gronau, Germany. The material, which is currently located at Cameco in Port Hope, Ontario, will be used for toll enrichment by URENCO Deutschland. The material was originally obtained by Cameco from Energy Fuels Resources, White Mesa Mill, pursuant to export license XSOU8798. In accordance with section 131a. of the Atomic Energy Act of 1954, as amended, it has been determined that this subsequent arrangement concerning the retransfer of nuclear material of United States origin will not be inimical to the common defense and security of the United States of America.

Dated: March 11, 2016.

For the Department of Energy.

Anne M. Harrington,

Deputy Administrator, Defense Nuclear Nonproliferation.

[FR Doc. 2016–07645 Filed 4–1–16; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Proposed Subsequent Arrangement

AGENCY: Office of Nonproliferation and Arms Control, Department of Energy.

ACTION: Proposed subsequent arrangement.

SUMMARY: This document is being issued under the authority of the Atomic Energy Act of 1954, as amended. The Department is providing notice of a proposed subsequent arrangement under the Agreement for Cooperation Concerning Civil Uses of Nuclear Energy Between the Government of the United States of America and the Government of Canada and the Agreement for Cooperation in the Peaceful Uses of Nuclear Energy Between the United States of America and the European Atomic Energy Community.

DATES: This subsequent arrangement will take effect no sooner than April 19, 2016.

FOR FURTHER INFORMATION CONTACT: Ms. Katie Strangis, Office of Nonproliferation and Arms Control, National Nuclear Security Administration, Department of Energy. Telephone: 202–586–8623 or email: *Katie.Strangis@nnsa.doe.gov.*

SUPPLEMENTARY INFORMATION: This subsequent arrangement concerns the retransfer of 210,059 kg of U.S.-origin natural uranium hexafluoride (UF6) (67.6% U), 142,000 kg of which is uranium, from Cameco Corporation (Cameco) in Saskatoon, Saskatchewan, to URENCO Ltd. (URENCO) in Almelo, The Netherlands. The material, which is currently located at Cameco in Port Hope, Ontario, will be used for toll enrichment by URENCO at its facility in Almelo, The Netherlands. The material was originally obtained by Cameco from Energy Fuels Resources, White Mesa Mill, pursuant to export license XSOU8798. In accordance with section 131a. of the Atomic Energy Act of 1954, as amended, it has been determined that this subsequent arrangement concerning the retransfer of nuclear material of United States origin will not be inimical to the common defense and security of the United States of America.

Dated: March 11, 2016.

For the Department of Energy.

Anne M. Harrington,

Deputy Administrator, Defense Nuclear Nonproliferation.

[FR Doc. 2016–07643 Filed 4–1–16; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Office of Energy Efficiency and Renewable Energy

Challenges and Opportunities for Pumped Storage Hydropower

AGENCY: Wind and Water Power Technologies Office, Office of Energy Efficiency and Renewable Energy, Department of Energy.

ACTION: Notice of public workshop and webinar.

SUMMARY: The Wind and Water Power Technologies Office within the U.S. Department of Energy (DOE) recently released a Request for Information to identify the challenges and opportunities faced by the pumped storage hydropower industry. DOE is now announcing two additional opportunities to obtain individual stakeholder insight into the technical and market challenges and potential pathways to facilitate the development of pumped storage in the U.S.: A public workshop and a subsequent webinar entitled, "Challenges and Opportunities for Pumped Storage Hydropower."

DATES:

Workshop

The public workshop will be held on Wednesday, April 27, 2016, from 1:00

p.m. to 5:00 p.m. in Washington, DC following the National Hydropower Association Conference.

Webinar

The public webinar will take place on Thursday, May 5, 2016, from 1:00 p.m. to 4:00 p.m. Eastern Time.

ADDRESSES:

Workshop

The public workshop will be held in the Congressional Room at the Capital Hilton located at 1001 16th St. NW., Washington, DC 20036.

Webinar

The webinar will be broadcasted to the public online. Instructions for accessing the webinar will be shared prior to the event. Registration is required.

FOR FURTHER INFORMATION CONTACT: Questions may be directed to Daniel Rabon at (202) 586–1545 or by email at *Daniel.Rabon@ee.doe.gov.*

SUPPLEMENTARY INFORMATION:

Background

Pumped storage hydropower (PSH) comprises the overwhelming majority (97%) of utility-scale storage in the U.S. The value proposition of PSH lies in its ability to provide operating flexibility to balance system loads and variable generation from other renewables. However, since 1995, only one PSH plant has been deployed in the U.S. Furthermore, while advanced PSH is being used worldwide, no single project in the U.S. is currently taking advantage of this technology.

DOE is looking to continue to assess and better understand the challenges faced by the PSH industry as they relate to technology advancements for small, modular and large systems, market structures and civil works, and their respective technical, financial, market and regulatory challenges. While DOE recently released a Request for Information on this topic, this public workshop and subsequent webinar provide an additional opportunity for the hydropower community to express thoughts, concerns, and ideas based on their own experience that will help inform program strategy. Topic areas of interest up for discussion will include technical and market challenges facing PSH development and potential pathways forward. An agenda will be distributed prior to the events.

The objective of the meeting is to ask for public input regarding the project described in this notice. To that end, it would be most helpful if members of the public provide information based on their personal experience, individual advice, and facts regarding this topic. It is not the objective of this meeting to obtain any group position or consensus. Rather, the DOE is seeking as many recommendations as possible from all individuals at this meeting.

Public Participation

Workshop

Members of the public are welcome to attend the workshop. Registration is free and available on a first-come, first-served basis. Persons interested in attending this public workshop must register online by Friday, April 22, 2016. Early registration is recommended because facilities are limited and, therefore, DOE may limit the number of participants from each organization. To register for the public workshop, please visit *http://bit.ly/1p5gFmW.* Registrants will receive confirmation after they have been accepted. If you need special accommodations due to a disability, please contact Marisol Bonnet at (202) 586–4265 or by email at *Marisol.Bonnet@ee.doe.gov.*

Webinar

Members of the public are welcome to attend the webinar. Persons interested in attending this public workshop must register online by Wednesday, May 4, 2016. To register for the public webinar, please visit *http://bit.ly/1R5h59a.* Instructions for accessing the webinar will be sent to all registrants prior to the event.

Issued in Washington, DC, on March 29, 2016.

Mark Higgins,

Deputy Director, Wind and Water Power Technologies Office, Energy Efficiency and Renewable Energy.

[FR Doc. 2016–07585 Filed 4–1–16; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

Take notice that the Commission received the following exempt wholesale generator filings:

Docket Numbers: EG16–76–000.

Applicants: Copper Mountain Solar 4, LLC.

Description: Self-Certification of EWG Status of Copper Mountain Solar 4, LLC.

Filed Date: 3/29/16.

Accession Number: 20160329–5096.

Comments Due: 5 p.m. ET 4/19/16.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER15–2130–002; ER15–2131–002.

Applicants: Roosevelt Wind Project, LLC, Milo Wind Project, LLC.

Description: Notice of Non-Material Change in Status of Roosevelt Wind Project, LLC and Milo Wind Project, LLC.

Filed Date: 3/28/16.

Accession Number: 20160328–5240.

Comments Due: 5 p.m. ET 4/18/16.

Docket Numbers: ER16–425–001.

Applicants: New York Independent System Operator, Inc.

Description: Compliance filing: NYISO comprehensive scarcity pricing compliance filing to be effective 12/31/9998.

Filed Date: 3/29/16.

Accession Number: 20160329–5023.

Comments Due: 5 p.m. ET 4/19/16.

Docket Numbers: ER16–1282–000.

Applicants: Southwest Power Pool, Inc.

Description: Section 205(d) Rate Filing: 2900R6 KMEA NITSA NOA to be effective 3/1/2016.

Filed Date: 3/29/16.

Accession Number: 20160329–5099.

Comments Due: 5 p.m. ET 4/19/16.

Docket Numbers: ER16–1283–000.

Applicants: NorthWestern Corporation.

Description: Initial rate filing: SA 778—EP&C Agreement with Project Spokane, LLC to be effective 3/30/2016.

Filed Date: 3/29/16.

Accession Number: 20160329–5124.

Comments Due: 5 p.m. ET 4/19/16.

The filings are accessible in the Commission's eLibrary system by clicking on the links or querying the docket number.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: March 29, 2016.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2016–07535 Filed 4–1–16; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Technical Conference

	Docket No.
Review of Generator Interconnection Agreements and Procedures	RM16–12–000.
American Wind Energy Association	RM15–21–000.

Take notice that the Federal Energy Regulatory Commission (Commission) will convene a staff-led technical conference in the above-referenced proceedings on Friday, May 13, 2016 from 9:30 a.m. to 4:30 p.m. (EDT). The conference will be held in the Commission Meeting Room at Commission headquarters, 888 First Street NE., Washington, DC 20426. Commissioners may attend and participate.

The purpose of this conference is to discuss select issues related to a petition for rulemaking submitted by the American Wind Energy Association (Docket No. RM15–21–000). In addition, the conference will explore other generator interconnection issues, including interconnection of energy storage.[1]

Discussions at the conference may involve issues raised in proceedings that are currently pending before the Commission. These proceedings include, but are not limited to:

E.ON Climate & Renewables North America LLC, Pioneer Trail Wind Farm, LLC, Settlers Trail Wind Farm, LLC v. *Northern Indiana Public Service Company*, Docket No. EL14–66–002;

Entergy Arkansas, Inc., Docket No. ER14–671–000;

Internal MISO Generators v. *Midcontinent Independent System Operator, Inc.*, Docket No. EL15–99–000;

Midcontinent Independent System Operator, Inc., Docket No. ER16–675–000;

California Independent System Operator Corporation, Docket No. ER16–693–000;

ISO New England, Inc., Docket No. ER16–946–000;

Midcontinent Independent System Operator, Inc., Docket No. ER16–1120–000; and

Midcontinent Independent System Operator, Inc., Docket No. ER16–1211–000.

Additional information regarding the conference program will be provided in subsequent supplemental notices of technical conference.

There is no fee for attendance. In-person attendees should allow time to pass through building security procedures before the 9:30 a.m. start time of the technical conference. Pre-registration is encouraged though not required. Attendees may register in advance at the following Web page: *https://www.ferc.gov/whats-new/registration/05-13-16-form.asp.*

The conference will be transcribed and webcast. Transcripts will be available immediately for a fee from Ace Reporting (202–347–3700). A link to the webcast of this event will be available in the Commission Calendar of Events at *www.ferc.gov.* The Capitol Connection provides technical support for the webcasts and offers the option of listening to the conferences via phone-bridge for a fee. For additional information, visit *www.CapitolConnection.org* or call (703) 993–3100.

Commission conferences are accessible under section 508 of the Rehabilitation Act of 1973. For accessibility accommodations please send an email to *accessibility@ferc.gov* or call toll free 1–866–208–3372 (voice) or 202–208–8659 (TTY), or send a fax to 202–208–2106 with the required accommodations.

For more information about this technical conference, please contact Tony Dobbins at *Tony.Dobbins@ferc.gov* or (202) 502–6630. For information related to logistics, please contact Sarah McKinley at *Sarah.Mckinley@ferc.gov* or (202) 502–8368.

Dated: March 29, 2016.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2016–07532 Filed 4–1–16; 8:45 am]

BILLING CODE 6717–01–P

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[1] The comments filed in Docket No. RM15–21–000 will be incorporated into Docket No. RM16–12–000.

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 8221–094]

Alaska Energy Authority; Notice of Availability of Draft Environmental Assessment

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's (Commission or FERC's) regulations, 18 Code of Federal Regulations (CFR) Part 380 (Order No. 486, 52 **Federal Register** [FR] 47897), the Office of Energy Projects has reviewed Alaska Energy Authority's application for a non-capacity amendment to the license for the Bradley Lake Hydroelectric Project (FERC Project No. 8221), located on the south shore, and near the head of Kachemak Bay, 22.5 miles east, northeast of the city of Homer, Kenai Peninsula Borough, Alaska. The project currently occupies a total of 5,498 acres of federal lands administered by the Bureau of Land Management.

Staff prepared a draft environmental assessment (DEA), which analyzes the potential environmental effects of constructing and operating a new diversion on the West Fork of Upper Battle Creek that would divert water to Bradley Lake and thereby increase generation at the project. The DEA concludes that authorizing the amendment, with appropriate environmental protective measures, would not constitute a major federal action that would significantly affect the quality of the human environment.

A copy of the DEA is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *www.ferc.gov* using the "eLibrary" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at 1–866–208–3676, or for TTY, 202–502–8659.

You may also register online at *www.ferc.gov/docs-filing/esubscription.asp* to be notified via email of new filings and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

Any comments should be filed within 30 days from the date of this notice. Comments may be filed electronically via the Internet. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site at *http://www.ferc.gov/docs-filing/efiling.asp.* Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at *http://www.ferc.gov/docs-filing/ecomment.asp.* You must include your name and contact information at the end of your comments. For assistance, please contact FERC Online Support. Although the Commission strongly encourages electronic filing, documents may also be paper-filed. To paper-file, mail a copy to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426. The first page of any filing should include docket number P–8221–094.

For further information, contact Steven Sachs by telephone at 202–502–8666 or by email at *Steven.Sachs@ferc.gov.*

Dated: March 29, 2016.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2016–07538 Filed 4–1–16; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 14748–000]

Energy Resources USA, Inc.; Notice of Preliminary Permit Application Accepted for Filing and Soliciting Comments and Motions To Intervene

On December 22, 2015, Energy Resources USA, Inc. (Energy Resources) filed an application for a preliminary permit, pursuant to section 4(f) of the Federal Power Act (FPA), proposing to study the feasibility of the Cedar Creek Hydroelectric Project (Cedar Creek Project or project) to be located at the U.S. Army Corps of Engineers' Cedar Creek Dam on the Cedar Creek River in Franklin County, Alabama. The sole purpose of a preliminary permit, if issued, is to grant the permit holder priority to file a license application during the permit term. A preliminary permit does not authorize the permit holder to perform any land-disturbing activities or otherwise enter upon lands or waters owned by others without the owners' express permission.

The proposed project would consist of the following: (1) A control structure with three 9.5-foot-wide, 25-foot-long spill gates; (2) one 6-foot-diameter, 49-foot-long penstock with a butterfly valve; (3) a bifurcation structure; (4) two 4-foot-diameter, 32-foot-long penstocks; (5) a powerhouse containing two generating units with a total capacity of 1.5 megawatts; (6) a 1000-foot-long, 220-foot-wide tailrace; (7) a substation; and (8) a 4.5-mile-long, 69 kV transmission line. The proposed project would have an estimated average annual generation of 5,500 megawatt-hours, and operate as directed by the Corps.

Applicant Contact: Mr. Ander Gonzalez, Energy Resources USA Inc., 2655 Le Jeune Road, Suite 804, Coral Gables, Florida 33134; Phone: (954) 248–8425; Email: *agonzalez@energyresources.es.*

FERC Contact: Christiane Casey; phone: (202) 502–8577.

Deadline for filing comments and motions to intervene: 60 days from the issuance of this notice.

The Commission strongly encourages electronic filing. Please file comments and motions to intervene using the Commission's eFiling system at *http://www.ferc.gov/docs-filing/efiling.asp.* Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at *http://www.ferc.gov/docs-filing/ecomment.asp.* You must include your name and contact information at the end of your comments. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov,* (866) 208–3676 (toll free), or (202) 502–8659 (TTY). In lieu of electronic filing, please send a paper copy to: Secretary, Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426. The first page of any filing should include docket number P–14748–000.

More information about this project, including a copy of the application, can be viewed or printed on the "eLibrary" link of the Commission's Web site at *http://www.ferc.gov/docs-filing/elibrary.asp.* Enter the docket number (P–14748) in the docket number field to access the document. For assistance, contact FERC Online Support.

Dated: March 29, 2016.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2016–07530 Filed 4–1–16; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 14746–000]

Energy Resources USA, Inc.; Notice of Preliminary Permit Application Accepted for Filing and Soliciting Comments and Motions To Intervene

On December 22, 2015, Energy Resources USA, Inc. (Energy Resources) filed an application for a preliminary permit, pursuant to section 4(f) of the Federal Power Act (FPA), proposing to study the feasibility of the Taylorsville Lake Dam Hydroelectric Project (Taylorsville Project or project) to be located at the U.S. Army Corps of Engineers' Taylorsville Lake Dam on the Salt River in Spencer County, Kentucky. The sole purpose of a preliminary permit, if issued, is to grant the permit holder priority to file a license application during the permit term. A preliminary permit does not authorize the permit holder to perform any land-disturbing activities or otherwise enter upon lands or waters owned by others without the owners' express permission.

The proposed project would consist of the following: (1) A control structure with one spill gate; (2) one 8-foot-diameter, 120-foot-long penstock with a butterfly valve; (3) a bifurcation structure; (4) two 5.5-foot-diameter, 32-foot-long penstocks; (5) a powerhouse containing two generating units with a total capacity of 3 megawatts; (6) a 90-foot-long, 60-foot-wide tailrace; (7) a substation; and (8) a 2.5-mile-long, 69 kV transmission line. The proposed project would have an estimated average annual generation of 9,500 megawatt-hours, and operate as directed by the Corps.

Applicant Contact: Mr. Ander Gonzalez, Energy Resources USA Inc., 2655 Le Jeune Road, Suite 804, Coral Gables, Florida 33134; Phone: (954) 248–8425; Email: *agonzalez@energyresources.es.*

FERC Contact: Christiane Casey; phone: (202) 502–8577.

Deadline for filing comments and motions to intervene: 60 days from the issuance of this notice.

The Commission strongly encourages electronic filing. Please file comments and motions to intervene using the Commission's eFiling system at *http://www.ferc.gov/docs-filing/efiling.asp.* Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at *http://www.ferc.gov/docs-filing/ecomment.asp.* You must include your name and contact information at the end of your comments. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov,* (866) 208–3676 (toll free), or (202) 502–8659 (TTY). In lieu of electronic filing, please send a paper copy to: Secretary, Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426. The first page of any filing should include docket number P–14746–000.

More information about this project, including a copy of the application, can be viewed or printed on the "eLibrary" link of the Commission's Web site at *http://www.ferc.gov/docs-filing/elibrary.asp.* Enter the docket number (P–14746) in the docket number field to access the document. For assistance, contact FERC Online Support.

Dated: March 29, 2016.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2016–07529 Filed 4–1–16; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. IC16–7–000]

Commission Information Collection Activities (FERC Form 6–Q); Comment Request; Extension

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Notice of information collection and request for comments.

SUMMARY: In compliance with the requirements of the Paperwork Reduction Act of 1995, 44 U.S.C. 3506(c)(2)(A), the Federal Energy Regulatory Commission (Commission or FERC) is soliciting public comment on the currently approved information collection, FERC Form 6–Q (Quarterly Financial Report of Oil Pipeline Companies).

DATES: Comments on the collection of information are due June 3, 2016.

ADDRESSES: You may submit comments (identified by Docket No. IC16–7–000) by either of the following methods:

- *eFiling at Commission's Web site: http://www.ferc.gov/docs-filing/efiling.asp.*
- *Mail/Hand Delivery/Courier:* Federal Energy Regulatory Commission, Secretary of the Commission, 888 First Street NE., Washington, DC 20426.

Instructions: All submissions must be formatted and filed in accordance with submission guidelines at: *http://www.ferc.gov/help/submission-guide.asp.* For user assistance contact FERC Online Support by email at *ferconlinesupport@ferc.gov,* or by phone at: (866) 208–3676 (toll-free), or (202) 502–8659 for TTY.

Docket: Users interested in receiving automatic notification of activity in this docket or in viewing/downloading comments and issuances in this docket may do so at *http://www.ferc.gov/docs-filing/docs-filing.asp.*

FOR FURTHER INFORMATION CONTACT: Ellen Brown may be reached by email at *DataClearance@FERC.gov,* telephone at (202) 502–8663, and fax at (202) 273–0873.

SUPPLEMENTARY INFORMATION:

Title: FERC Form 6–Q, Quarterly Financial Report of Oil Pipeline Companies.[1]

OMB Control No.: 1902–0206.

Type of Request: Three-year extension of the FERC Form 6–Q information collection requirements with no changes to the current reporting requirements.

Abstract: Under the Interstate Commerce Act (ICA),[2] the Commission is authorized and empowered to make investigations and to collect and record data to the extent FERC may consider to be necessary or useful for the purpose of carrying out the provisions of the ICA. FERC must ensure just and reasonable rates for transportation of crude oil and petroleum products by pipelines in interstate commerce.

The Commission uses the information collected by FERC Form 6–Q to carry out its responsibilities in implementing the statutory provisions of the ICA to include the authority to prescribe rules and regulations concerning accounts, records, and memoranda, as necessary or appropriate. Financial accounting and reporting provides necessary information concerning a company's past performance and its future prospects. Without reliable financial statements prepared in accordance with the Commission's Uniform System of Accounts and related regulations, the Commission would be unable to accurately determine the costs that relate to a particular time period, service, or line of business.

The Commission uses data from the FERC Form 6–Q to assist in:

1. Implementation of its financial audits and programs,
2. continuous review of the financial condition of regulated companies,
3. assessment of energy markets,
4. rate proceedings and economic analyses, and
5. research for use in litigation.

Financial information reported on the quarterly FERC Form 6–Q provides FERC, as well as customers, investors and others, an important tool to help identify emerging trends and issues affecting jurisdictional entities within the energy industry. It also provides timely disclosures of the impacts that new accounting standards, or changes in existing standards, have on jurisdictional entities, as well as the economic effects of significant transactions, events, and circumstances. The reporting of this information by jurisdictional entities assists the Commission in its analysis of profitability, efficiency, risk, and in its overall monitoring.

Type of Respondents: Oil pipelines.

Estimate of Annual Burden:[3] The Commission estimates the annual public reporting burden for the information collection as:

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[1] The renewal request in this IC docket is for the current FERC Form 6–Q, with no change to the reporting requirements. The FERC Form 6–Q is also part of the Forms Refresh effort (started in Docket No. AD15–11), which is a separate activity.

[2] 49 U.S.C. Part 1, Section 20, 54 Stat. 916.

[3] The Commission defines burden as the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. For further explanation of what is included in the information collection burden, reference 5 Code of Federal Regulations 1320.3.

FERC FORM 6–Q—QUARTERLY FINANCIAL REPORT OF OIL COMPANIES

Number of respondents	Annual number of responses per respondent	Total number of responses	Average burden & cost per response [4]	Total annual burden hours & total annual cost	Cost per respondent ($)
(1)	(2)	(1) * (2) = (3)	(4)	(3) * (4) = (5)	(5) ÷ (1)
175	3	525	150 $10,800	78,750 $5,670,000	32,400

Comments: Comments are invited on: (1) Whether the collection of information is necessary for the proper performance of the functions of the Commission, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of the burden and cost of the collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility and clarity of the information collection; and (4) ways to minimize the burden of the collection of information on those who are to respond, including the use of automated collection techniques or other forms of information technology.

Dated: March 29, 2016.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2016–07537 Filed 4–1–16; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP15–558–000]

PennEast Pipeline Company, LLC; Notice of Schedule for Environmental Review of the Penneast Pipeline Project

On September 24, 2015, PennEast Pipeline Company, LLC (PennEast) filed an application in Docket No. CP15–558–000 under section 7(c) of the Natural Gas Act seeking a Certificate of Public Convenience and Necessity to construct, operate, and maintain a new natural gas pipeline system in Pennsylvania and New Jersey. The proposed project is known as the PennEast Pipeline Project and will provide approximately 1.0 billion cubic feet per day of year-round transportation natural gas service to markets in eastern and southeastern Pennsylvania and New Jersey.

On October 8, 2015, the Federal Energy Regulatory Commission (Commission or FERC) issued its Notice of Application for the project. Among other things, that notice alerted other agencies issuing federal authorizations of the requirement to complete all necessary reviews and to reach a final decision on the request for a federal authorization within 90 days of the date of issuance of the Commission staff's final Environmental Impact Statement (EIS) for the PennEast Pipeline Project. This instant notice identifies the FERC staff's planned schedule for completion of the final EIS for the project.

Schedule for Environmental Review

Issuance of Notice of Availability of the final EIS—December 16, 2016.

90-day Federal Authorization Decision Deadline—March 16, 2017.

If a schedule change becomes necessary, additional notice will be provided so the relevant agencies are kept informed of the project's progress.

Project Description

The project includes a total of 118.8 miles of pipeline and laterals composed of 115.0 miles of new, 36-inch-diameter pipeline extending from Luzerne County, Pennsylvania to Mercer County, New Jersey. The Project would also have three pipeline laterals: The 2.1-mile Hellertown Lateral consisting of 24-inch-diameter pipeline in Northampton County, Pennsylvania; the 0.1-mile Gilbert Lateral consisting of 12-inch-diameter pipeline in Hunterdon County, Pennsylvania; and the 1.5-mile Lambertville Lateral consisting of 36-inch-diameter pipeline in Hunterdon County, New Jersey.

The proposed aboveground facilities consist of a new, 47,700 horsepower compressor station in Kidder Township, Carbon County, Pennsylvania. The project would also include the construction of 8 meter and regulator stations, 11 mainline valves, and 11 pig launcher/receiver sites.

Background

On October 10, 2014, the Commission staff granted PennEast's request to use the FERC's Pre-filing environmental review process and assigned the PennEast Pipeline Project Docket No. PF15–1–000. On January 13, 2015, the Commission issued, in that docket, a *Notice of Intent to Prepare an Environmental Impact Statement for the Planned PennEast Pipeline Project, Request for Comments on Environmental Issues, and Notice of Public Scoping Meetings* (NOI). The NOI was sent to affected landowners; federal, state, and local government agencies; elected officials; environmental and public interest groups; Native American tribes; other interested parties; and local libraries and newspapers.

The primary issues raised by the commenters during scoping included concerns about potential impacts on agricultural farms, ground water resources on Sourland Region, protected conservation lands, threatened and endangered species, archaeological sites, forest (*i.e.,* fragmentation), and impacts on property value. In addition, the added responsibility for emergency response teams; potential for arsenic release into groundwater; safety of local residents in the event of a pipeline incident; long-term impacts of compressor stations on human health and the environment; construction in karst areas; and need for alternatives were also raised.

The U.S. Environmental Protection Agency, U.S. Army Corps of Engineers, U.S. Department of Agriculture, U.S. Fish and Wildlife Service, and U.S. Department of Transportation's Pipeline and Hazardous Materials Safety Administration are cooperating agencies in the preparation of the EIS.

Additional Information

In order to receive notification of the issuance of the EIS and to keep track of all formal issuances and submittals in specific dockets, the Commission offers a free service called eSubscription. This can reduce the amount of time you spend researching proceedings by automatically providing you with notification of these filings, document summaries, and direct links to the documents. Go to *www.ferc.gov/docs-filing/esubscription.asp.*

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[4] The estimates for cost per response are derived using the 2015 FERC average salary plus benefits of $149,489/year (or $72.00/hour). Commission staff finds that the work done for this information collection is typically done by wage categories similar to those at FERC.

Additional information about the Project is available from the Commission's Office of External Affairs at (866) 208–FERC or on the FERC Web site (*www.ferc.gov*). Using the "eLibrary" link, select "General Search" from the eLibrary menu, enter the selected date range and "Docket Number" excluding the last three digits (*i.e.*, CP15–558), and follow the instructions. For assistance with access to eLibrary, the helpline can be reached at (866) 208–3676, TTY (202) 502–8659, or at *FERCOnlineSupport@ferc.gov.* The eLibrary link on the FERC Web site also provides access to the texts of formal documents issued by the Commission, such as orders, notices, and rule makings.

Dated: March 29, 2016.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2016–07536 Filed 4–1–16; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 12796–004]

City of Wadsworth, Ohio; Notice of Teleconference

a. *Project Name and Number:* R.C. Byrd Hydroelectric Project No. 12796.

b. *Date and Time of Meeting:* Thursday, April 28, 2016 at 1:00 p.m. (Eastern Daylight Time).

c. *FERC Contact:* Andy Bernick, *andrew.bernick@ferc.gov* or (202) 502–8660.

d. *Purpose of Meeting:* Commission staff will hold a teleconference to discuss: (1) The Indiana Bat and Northern Long Eared Bat Conservation Plan and Mussel Monitoring and Conservation Plan for the R.C. Byrd Hydroelectric Project, filed in draft form on June 23, 2015, by American Municipal Power, Inc. (or AMP, agent for the City of Wadsworth, Ohio); (2) the report entitled "Examining the Effect of Potential Water Velocities on Mussel Populations at R.C. Byrd Lock and Dam on the Ohio River (ORM 279.2)" prepared for AMP and filed on February 10, 2016; and (3) the current status of resolving the remaining information needs noted in U.S. Fish and Wildlife Service's Ohio Ecological Services Field Office and West Virginia Field Office comments on the draft plans filed August 26, 2015.

e. All local, state, and federal agencies, Indian tribes, and other interested parties are invited to participate by phone. Please call Andy Bernick at (202) 502–8660 by Thursday, April 21, 2016, to RSVP and to receive specific instructions on how to participate.

Dated: March 29, 2016.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2016–07533 Filed 4–1–16; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 14744–000]

Energy Resources USA, Inc.; Notice of Preliminary Permit Application Accepted for Filing and Soliciting Comments and Motions To Intervene

On December 22, 2015, Energy Resources USA, Inc. (Energy Resources) filed an application for a preliminary permit, pursuant to section 4(f) of the Federal Power Act (FPA), proposing to study the feasibility of the Nolin Lake Dam Hydroelectric Project (Nolin Project or project) to be located at the U.S. Army Corps of Engineers' Nolin Lake Dam on the Nolin River in Edmonson County, Kentucky. The sole purpose of a preliminary permit, if issued, is to grant the permit holder priority to file a license application during the permit term. A preliminary permit does not authorize the permit holder to perform any land-disturbing activities or otherwise enter upon lands or waters owned by others without the owners' express permission.

The proposed project would consist of the following: (1) A control structure with three 9.5-foot-wide, 25-foot-long spill gates; (2) one 10-foot-diameter, 65-foot-long penstock with a butterfly valve; (3) a bifurcation structure; (4) two 6.5-foot-diameter, 32-foot-long penstocks; (5) a powerhouse containing two generating units with a total capacity of 7 megawatts; (6) a 1000-foot-long, 220-foot-wide tailrace; (7) a substation; and (8) a 3-mile-long, 69 kV transmission line. The proposed project would have an estimated average annual generation of 26,900 megawatt-hours, and operate as directed by the Corps.

Applicant Contact: Mr. Ander Gonzalez, Energy Resources USA Inc., 2655 Le Jeune Road, Suite 804, Coral Gables, Florida 33134; Phone: (954) 248–8425; Email: *agonzalez@energyresources.es.*

FERC Contact: Christiane Casey; phone: (202) 502–8577.

Deadline for filing comments and motions to intervene: 60 days from the issuance of this notice.

The Commission strongly encourages electronic filing. Please file comments and motions to intervene using the Commission's eFiling system at *http://www.ferc.gov/docs-filing/efiling.asp.* Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at *http://www.ferc.gov/docs-filing/ecomment.asp.* You must include your name and contact information at the end of your comments. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov,* (866) 208–3676 (toll free), or (202) 502–8659 (TTY). In lieu of electronic filing, please send a paper copy to: Secretary, Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426. The first page of any filing should include docket number P–14744–000.

More information about this project, including a copy of the application, can be viewed or printed on the "eLibrary" link of the Commission's Web site at *http://www.ferc.gov/docs-filing/elibrary.asp.* Enter the docket number (P–14744) in the docket number field to access the document. For assistance, contact FERC Online Support.

Dated: March 29, 2016.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2016–07534 Filed 4–1–16; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 14750–000]

Energy Resources USA, Inc.; Notice of Preliminary Permit Application Accepted for Filing and Soliciting Comments and Motions To Intervene

On December 22, 2015, Energy Resources USA, Inc. (Energy Resources) filed an application for a preliminary permit, pursuant to section 4(f) of the Federal Power Act (FPA), proposing to study the feasibility of the Lake Tuscaloosa Dam Hydroelectric Project (Lake Tuscaloosa Project or project) to be located at the U.S. Army Corps of Engineers' Lake Tuscaloosa Dam on the North River in Tuscaloosa County, Alabama. The sole purpose of a preliminary permit, if issued, is to grant the permit holder priority to file a license application during the permit term. A preliminary permit does not authorize the permit holder to perform any land-disturbing activities or otherwise enter upon lands or waters owned by others without the owners' express permission.

The proposed project would consist of the following: (1) A control structure with three 9.5-foot-wide, 25-foot-long spill gates; (2) one 6-foot-diameter, 98-foot-long penstock with a butterfly valve; (3) a bifurcation structure; (4) two 4-foot-diameter, 32-foot-long penstocks; (5) a powerhouse containing two generating units with a total capacity of 1.65 megawatts; (6) a 1000-foot-long, 220-foot-wide tailrace; (7) a substation; and (8) a 2.5-mile-long, 69 kV transmission line. The proposed project would have an estimated average annual generation of 5,200 megawatt-hours, and operate as directed by the Corps.

Applicant Contact: Mr. Ander Gonzalez, Energy Resources USA Inc., 2655 Le Jeune Road, Suite 804, Coral Gables, Florida 33134; Phone: (954) 248–8425; Email: *agonzalez@energyresources.es.*

FERC Contact: Christiane Casey; phone: (202) 502–8577.

Deadline for filing comments and motions to intervene: 60 days from the issuance of this notice.

The Commission strongly encourages electronic filing. Please file comments and motions to intervene using the Commission's eFiling system at *http://www.ferc.gov/docs-filing/efiling.asp.* Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at *http://www.ferc.gov/docs-filing/ecomment.asp.* You must include your name and contact information at the end of your comments. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov,* (866) 208–3676 (toll free), or (202) 502–8659 (TTY). In lieu of electronic filing, please send a paper copy to: Secretary, Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426. The first page of any filing should include docket number P–14750–000.

More information about this project, including a copy of the application, can be viewed or printed on the "eLibrary" link of the Commission's Web site at *http://www.ferc.gov/docs-filing/elibrary.asp.* Enter the docket number (P–14750) in the docket number field to access the document. For assistance, contact FERC Online Support.

Dated: March 29, 2016.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2016–07531 Filed 4–1–16; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No., 14745–000]

Energy Resources USA, Inc.; Notice of Preliminary Permit Application Accepted for Filing and Soliciting Comments and Motions To Intervene

On December 22, 2015, Energy Resources USA, Inc. (Energy Resources) filed an application for a preliminary permit, pursuant to section 4(f) of the Federal Power Act (FPA), proposing to study the feasibility of the Rough River Lake Dam Hydroelectric Project (Rough River Project or project) to be located at the U.S. Army Corps of Engineers' Rough River Lake Dam on the Rough River in Breckinridge and Grayson Counties, Kentucky. The sole purpose of a preliminary permit, if issued, is to grant the permit holder priority to file a license application during the permit term. A preliminary permit does not authorize the permit holder to perform any land-disturbing activities or otherwise enter upon lands or waters owned by others without the owners' express permission.

The proposed project would consist of the following: (1) A control structure with three 9.5-foot-wide, 25-foot-long spill gates; (2) one 9.5-foot-diameter, 130-foot-long penstock with a butterfly valve; (3) a bifurcation structure; (4) two 6.5-foot-diameter, 32-foot-long penstocks; (5) a powerhouse containing two generating units with a total capacity of 10 megawatts; (6) a 1000-foot-long, 220-foot-wide tailrace; (7) a substation; and (8) a 0.3-mile-long, 69 kV transmission line. The proposed project would have an estimated average annual generation of 8,700 megawatt-hours, and operate as directed by the Corps.

Applicant Contact: Mr. Ander Gonzalez, Energy Resources USA Inc., 2655 Le Jeune Road, Suite 804, Coral Gables, Florida 33134; Phone: (954) 248–8425; E-mail: *agonzalez@energyresources.es.*

FERC Contact: Christiane Casey; phone: (202) 502–8577.

Deadline for filing comments and motions to intervene: 60 days from the issuance of this notice.

The Commission strongly encourages electronic filing. Please file comments and motions to intervene using the Commission's eFiling system at *http://www.ferc.gov/docs-filing/efiling.asp.* Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at *http://www.ferc.gov/docs-filing/ecomment.asp.* You must include your name and contact information at the end of your comments. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov,* (866) 208–3676 (toll free), or (202) 502–8659 (TTY). In lieu of electronic filing, please send a paper copy to: Secretary, Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426. The first page of any filing should include docket number P–14745–000.

More information about this project, including a copy of the application, can be viewed or printed on the "eLibrary" link of the Commission's Web site at *http://www.ferc.gov/docs-filing/elibrary.asp.* Enter the docket number (P–14745) in the docket number field to access the document. For assistance, contact FERC Online Support.

Dated: March 29, 2016.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2016–07528 Filed 4–1–16; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. AD16–2–000]

Review of Cost Submittals by Other Federal Agencies for Administering Part I of the Federal Power Act; Notice of Postponing Technical Conference

In a prior notice, the Commission scheduled a technical conference to review the submitted Other Federal Agency costs in the above-captioned docket. Due to the impact of the Nuclear Security Summit on March 31, 2016 the conference is postponed to April 7, 2016.

The technical conference will be held on April 7, 2016, in Conference Room 3M–1 at the Commission's headquarters, 888 First Street NE., Washington, DC. The technical conference will begin at 2:00 p.m. (EST).

Dated: March 29, 2016.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2016–07539 Filed 4–1–16; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Western Area Power Administration

Boulder Canyon Project

AGENCY: Western Area Power Administration, DOE.

ACTION: Notice of proposed base charge and rates.

SUMMARY: Western Area Power Administration (Western) is proposing an adjustment to the Boulder Canyon Project (BCP) electric service base charge and rates. The current base charge and rates under Rate Schedule BCP–F9 expire September 30, 2016. The current base charge is not sufficient to cover all annual costs including operation and maintenance, replacements, and interest expense; and repay investment obligations within the required period. The proposed base charge will provide sufficient revenue to cover all annual costs and to repay investment obligations within the allowable period. Western will post a detailed rate package that identifies the reasons for the base charge and rates adjustment on its Web site during the consultation and comment period. The proposed base charge and rates are scheduled to become effective October 1, 2016, and will remain in effect through September 30, 2017. Publication of this **Federal Register** notice initiates the formal process for the proposed base charge and rates.

DATES: The consultation and comment period begins today and will end July 5, 2016. Western will present a detailed explanation of the proposed base charge and rates at a public information forum that will be held on April 27, 2016, at 10:30 a.m. Mountain Standard Time (MST), in Phoenix, Arizona. Western will accept oral and written comments at a public comment forum that will be held on May 25, 2016, at 10:30 a.m. MST. Western will accept written comments any time during the consultation and comment period.

ADDRESSES: The public information forum and public comment forum will be held at Western's Desert Southwest Customer Service Regional Office, located at 615 South 43rd Avenue, Phoenix, Arizona 85009. Send written comments to Mr. Ronald E. Moulton, Regional Manager, Desert Southwest Customer Service Region, Western Area Power Administration, P.O. Box 6457, Phoenix, AZ 85005–6457, email *moulton@wapa.gov.* Written comments may also be faxed to (602) 605–2490, attention: Mr. Scott Lund, Rates Manager. Western will post information about the rate process, as well as comments received via letter, email, and fax, on its Web site at: *http://www.wapa.gov/regions/DSW/Rates/Pages/boulder-canyon-rates.aspx.* Written comments must be received by the end of the consultation and comment period to be considered by Western in its decision process.

As access to Western facilities is controlled, any United States (U.S.) citizen wishing to attend the forums must present an official form of picture identification (ID), such as a U.S. driver's license, U.S. passport, U.S. Government ID, or U.S. Military ID. Foreign nationals should contact Western via Mr. Scott Lund, Rates Manager, telephone (602) 605–2442 or email *slund@wapa.gov* 30 days in advance of the meeting to obtain the necessary form for admittance to Western.

FOR FURTHER INFORMATION CONTACT: Mr. Scott Lund, Rates Manager, Desert Southwest Customer Service Region, Western Area Power Administration, P.O. Box 6457, Phoenix, AZ 85005–6457, (602) 605–2442, or email *slund@wapa.gov.*

SUPPLEMENTARY INFORMATION: Rate Schedule BCP–F9 under Rate Order No. WAPA–171 was approved on an interim basis by the Deputy Secretary of Energy for a five-year period beginning on October 1, 2015, and ending September 30, 2020.[1] Final approval is pending from the Federal Energy Regulatory Commission (FERC).

The proposed base charge and rates for BCP electric service are designed to recover an annual revenue requirement that includes investment repayment, interest, operation and maintenance, replacements, payments to states, visitor services, and uprating payments. The total costs are offset by the projected revenue from water sales, the visitor center, ancillary services, and late fees. The annual revenue requirement is the base charge for electric service divided equally between capacity and energy. The annual composite rate is the base charge divided by annual energy sales.

Rate Schedule BCP–F9 requires the annual calculation of the base charge and rates based on updated financial and hydrology data. The proposed base charge for fiscal year (FY) 2017 is $68,572,989 and the proposed composite rate is 19.60 mills/kilowatthour. The following table compares the existing and proposed base charge and composite rate.

COMPARISON OF EXISTING AND PROPOSED BASE CHARGE AND COMPOSITE RATE

	Existing October 1, 2015 through September 30, 2016	Proposed October 1, 2016 through September 30, 2017	Percent change
Base Charge ($)	63,735,856	68,572,989	8
Composite Rate (mills/kWh)	18.33	19.60	7

The proposed FY 2017 base charge represents an increase of approximately 8 percent compared to the FY 2016 base charge. Increases in annual operation and maintenance and replacement costs, and decreases in projections of non-power revenue and carryover revenue account for the overall base charge increase.

The proposed FY 2017 composite rate represents an increase of approximately 7 percent compared to the FY 2016 composite rate. Increases in the proposed base charge and forecasted energy sales account for the composite rate increase. This proposal, effective October 1, 2016, is preliminary and is subject to change upon publication of the final base charge and rates.

Legal Authority

Western will hold both a public information forum and a public comment forum. After review of public comments, Western will take further action on the proposed base charge and rates and follow procedures for public participation consistent with 10 CFR parts 903 and 904.

Western is establishing an electric service base charge and rates for BCP under the Department of Energy (DOE) Organization Act (42 U.S.C. 7152); the Reclamation Act of 1902 (ch. 1093, 32 Stat. 388), as amended and supplemented by subsequent enactments; and other acts that specifically apply to the project involved.

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[1] 80 FR 44098 (July 24, 2015).

By Delegation Order No. 00–037.00A, effective December 25, 2013, the Secretary of Energy delegated: (1) The authority to develop power and transmission rates to Western's Administrator; (2) the authority to confirm, approve, and place such rates into effect on an interim basis to the Deputy Secretary of Energy; and (3) the authority to confirm, approve, and place into effect on a final basis, to remand, or to disapprove such rates to the Federal Energy Regulatory Commission.

Availability of Information

All brochures, studies, comments, letters, memorandums, or other documents Western initiates or uses to develop the proposed base charge and rates are available for inspection and copying at the Desert Southwest Customer Service Regional Office, Western Area Power Administration, located at 615 South 43rd Avenue, Phoenix, Arizona 85009. Many of these documents and supporting information are available on Western's Web site at: *http://www.wapa.gov/regions/DSW/Rates/Pages/boulder-canyon-rates.aspx.*

Ratemaking Procedure Requirements

Environmental Compliance

In compliance with the National Environmental Policy Act (NEPA) of 1969, 42 U.S.C. 4321–4347; the Council on Environmental Quality Regulations for implementing NEPA (40 CFR parts 1500–1508); and DOE NEPA Implementing Procedures and Guidelines (10 CFR part 1021), Western is in the process of determining whether an environmental assessment or an environmental impact statement should be prepared or if this action can be categorically excluded from those requirements.

Determination Under Executive Order 12866

Western has an exemption from centralized regulatory review under Executive Order 12866; accordingly, no clearance of this notice by the Office of Management and Budget is required.

Dated: March 28, 2016.

Mark A. Gabriel,

Administrator.

[FR Doc. 2016–07641 Filed 4–1–16; 8:45 am]

BILLING CODE 6450–01–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2015–0022; FRL–9944–05]

Pesticide Product Registration; Receipt of Applications for New Uses

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has received applications to register new uses for pesticide products containing currently registered active ingredients. Pursuant to the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), EPA is hereby providing notice of receipt and opportunity to comment on these applications.

DATES: Comments must be received on or before May 4, 2016.

ADDRESSES: Submit your comments, identified by the docket identification (ID) number and the File Symbol of interest as shown in the body of this document, by one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the online instructions for submitting comments. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute.
- *Mail:* OPP Docket, Environmental Protection Agency Docket Center (EPA/DC), (28221T), 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001.
- *Hand Delivery:* To make special arrangements for hand delivery or delivery of boxed information, please follow the instructions at *http://www.epa.gov/dockets/contacts.html.*

Additional instructions on commenting or visiting the docket, along with more information about dockets generally, is available at *http://www.epa.gov/dockets.*

FOR FURTHER INFORMATION CONTACT: Robert McNally, Biopesticides and Pollution Prevention Division (BPPD) (7511P), email address: *BPPDFRNotices@epa.gov.*, Susan Lewis, Registration Division (RD) (7505P), email address: *RDFRNotices@epa.gov.* The mailing address for each contact person is: Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001. The main telephone number: (703) 305–7090. As part of the mailing address, include the contact person's name, division, and mail code. The division to contact is listed at the end of each application summary.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

You may be potentially affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. The following list of North American Industrial Classification System (NAICS) codes is not intended to be exhaustive, but rather provides a guide to help readers determine whether this document applies to them. Potentially affected entities may include:

- Crop production (NAICS code 111).
- Animal production (NAICS code 112).
- Food manufacturing (NAICS code 311).
- Pesticide manufacturing (NAICS code 32532).

B. What should I consider as I prepare my comments for EPA?

1. *Submitting CBI.* Do not submit this information to EPA through regulations.gov or email. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD–ROM that you mail to EPA, mark the outside of the disk or CD–ROM as CBI and then identify electronically within the disk or CD–ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

2. *Tips for preparing your comments.* When preparing and submitting your comments, see the commenting tips at *http://www.epa.gov/dockets/comments.html.*

II. Registration Applications

EPA has received applications to register new uses for pesticide products containing currently registered active ingredients. Pursuant to the provisions of FIFRA section 3(c)(4) (7 U.S.C. 136a(c)(4)), EPA is hereby providing notice of receipt and opportunity to comment on these applications. Notice of receipt of these applications does not imply a decision by the Agency on these applications.

1. *EPA Registration Number:* 100–RLON. *Docket ID number:* EPA–HQ–OPP–2016–0049. *Applicant:* Syngenta Crop Protection LLC, 410 Swing Road, P.O. Box 18300, Greensboro, NC 27419–8300. *Active ingredient:* Oxathiapiprolin. *Product type:*

Fungicide. *Proposed use:* Treatment of sunflower seeds. *Contact:* RD.

2. *EPA Registration Number:* 352–OEN. *Docket ID number:* EPA–HQ–OPP–2016–0049. *Applicant:* E.I. du Pont de Nemours and Company, Inc., Dupont Crop Protection, Stine-Haskell Research Center, P.O. Box 30, Newark, DE 19714–0300. *Active ingredient:* Oxathiapiprolin. *Product type:* Fungicide. *Proposed use:* Treatment of soybean and sunflower seeds. *Contact:* RD.

3. *EPA Registration Number/File Symbol:* 6218–IA. *Docket ID number:* EPA–HQ–OPP–2016–0165. *Applicant:* Summit Chemical Co., 235 S. Kresson St., Baltimore, MD 21224–2616. *Active ingredient: Bacillus thuringiensis ssp. israelensis* strain SUM–6218. *Product type:* Insecticide. *Proposed use:* To kill mosquito larvae in standing water and control fungus gnats in house and garden plants. *Contact.* BPPD.

4. *EPA Registration Numbers:* 59639–97, 59639–99, 59639–119, 59639–127. *Docket ID number:* EPA–HQ–OPP–2015–0658. *Applicant:* Valent USA Corporation, 1600 Riviera Avenue, Suite 200. Walnut Creek, CA 94596–8025 *Active ingredient:* Flumioxazin. *Product type:* Herbicide. *Proposed use:* Soybean Forage and Soybean Hay. *Contact:* RD.

5. EPA Registration Numbers: 59639–107 and 59639–202. *Docket ID number:* EPA–HQ–OPP–2015–0735. *Applicant:* Valent U.S.A. Corporation, 1600 Riviera Avenue, Suite 200, Walnut Creek, CA 94596–8025. *Active ingredient:* Etoxazole. *Product type:* Insecticide. *Proposed Use:* Soybean. *Contact:* RD.

6. *EPA Registration Number:* 71185–4. *Docket ID number:* EPA–HQ–OPP–2016–0067. *Applicant:* Geo Logic Corporation, P.O. Box 3091, Tequesta, FL 33469. *Active ingredient:* Streptomycin sulfate. *Product type:* Bactericide/fungicide. *Proposed use:* Citrus Fruit (Crop Group 10–10). *Contact:* RD.

7. *EPA Registration numbers:* 71512–11 and 71512–18. *Docket ID Number:* EPA–HQ–OPP–2016–0112. *Applicant:* ISK Biosciences Corporation, 7470 Auburn Road, Suite A, Concord, Ohio 44077. *Active Ingredient:* Flazasulfuron. *Product Type:* Herbicide. *Proposed use:* Olives. *Contact:* RD.

8. *EPA Registration Number:* 80990–3, 80990–4. *Docket ID number:* EPA–HQ–OPP–2016–0067. *Applicant:* AgroSource, Inc., P.O. Box 3091, Tequesta, FL 33469. *Active ingredient:* Streptomycin sulfate. *Product type:* Bactericide/fungicide. *Proposed use:* Citrus Fruit (Crop Group 10–10). *Contact:* RD.

Authority: 7 U.S.C. 136 *et seq.*

Dated: March 25, 2016.

Daniel J. Rosenblatt,

Acting Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 2016–07655 Filed 4–1–16; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2016–0108; FRL–9943–77]

Agency Information Collection Activities; Proposed Renewal of an Existing Collection (EPA ICR No. 0278.12); Comment Request

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA), this document announces that EPA is planning to submit an Information Collection Request (ICR) to the Office of Management and Budget (OMB). The ICR, entitled: "Notice of Supplemental Distribution of a Registered Pesticide Product," and identified by EPA ICR No. 0278.12 and OMB Control No. 2070–0044, represents the renewal of an existing ICR that is scheduled to expire on November 30, 2016. Before submitting the ICR to OMB for review and approval, EPA is soliciting comments on specific aspects of the proposed information collection that are summarized in this document. The ICR and accompanying material are available in the docket for public review and comment.

DATES: Comments must be received on or before June 3, 2016.

ADDRESSES: Submit your comments, identified by docket identification (ID) number EPA–HQ–OPP–2016–0108, by one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the online instructions for submitting comments. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute.
- *Mail:* OPP Docket, Environmental Protection Agency Docket Center (EPA/DC), (28221T), 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001.
- *Hand Delivery:* To make special arrangements for hand delivery or delivery of boxed information, please follow the instructions at *http://www.epa.gov/dockets/contacts.html.*

Additional instructions on commenting or visiting the docket, along with more information about dockets generally, is available at *http://www.epa.gov/dockets.*

FOR FURTHER INFORMATION CONTACT: Jeffrey Bryan, Field and External Affairs Division (7506P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001; telephone number: (703) 347–8782; email address: *bryan.jeffrey@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. What Information is EPA particularly interested in?

Pursuant to PRA section 3506(c)(2)(A) (44 U.S.C. 3506(c)(2)(A)), EPA specifically solicits comments and information to enable it to:

1. Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility.
2. Evaluate the accuracy of the Agency's estimates of the burden of the proposed collection of information, including the validity of the methodology and assumptions used.
3. Enhance the quality, utility, and clarity of the information to be collected.
4. Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses. In particular, EPA is requesting comments from very small businesses (those that employ less than 25) on examples of specific additional efforts that EPA could make to reduce the paperwork burden for very small businesses affected by this collection.

II. What information collection activity or ICR does this action apply to?

Title: Notice of Supplemental Distribution of a Registered Pesticide Product.

ICR number: EPA ICR No. 0278.12.

OMB control number: OMB Control No. 2070–0044.

ICR status: This ICR is currently scheduled to expire on November 30, 2016. An Agency may not conduct or sponsor, and a person is not required to respond to, a collection of information, unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in title 40 of the Code of Federal Regulations (CFR), after appearing in the **Federal Register** when approved, are listed in 40 CFR part 9, are displayed either by publication in the **Federal Register** or by other appropriate means, such as on the related collection instrument or form, if applicable. The display of OMB control numbers for certain EPA regulations is consolidated in 40 CFR part 9.

Abstract: This information collection activity provides the EPA with notification of supplemental registration of distributors of pesticide products. EPA is responsible for the regulation of pesticides as mandated by the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA), as amended. Section 3(e) of FIFRA (see 7 U.S.C. 136a (e), allows pesticide registrants to distribute or sell a registered pesticide product under a different name instead of or in addition to the name under the original registration. Such distribution and sale is termed "supplemental distribution" and the product is termed a "distributor product." EPA requires the pesticide registrant to submit a supplemental statement (EPA Form 8570–5, Notice of Supplemental Distribution of a Registered Pesticide Product) when the registrant has entered into an agreement with a second company that will distribute the registrant's product under the second company's name and product name.

Burden statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average 0.32 hours per response. The ICR, a copy of which is available in the docket, provides a detailed explanation of this estimate, which is only briefly summarized here:

Estimated total number of potential respondents: 1,885.

Frequency of response: On occasion.

Estimated total average number of responses for each respondent: 1.

Estimated total annual burden hours: 603 hours.

Estimated total annual costs: $54,463. This includes an estimated burden cost of $ 54,463 and an estimated cost of $ 0 for non-burden hour paperwork costs, *e.g.,* investment or maintenance and operational costs.

Changes in the estimates from the last approval: The renewal of this ICR will result in an overall increase of 216 hours in the total estimated respondent burden identified in the currently approved ICR. This increase reflects the increase in the number of applications the Agency expects to receive in the next 3 years. EPA had expected to receive about 1,451 notice submissions annually over the past three years. Based on the number of submissions received annually over that period, the Agency now expects to receive about 1,885 notice submissions annually over the next 3 years. This change is an adjustment.

III. What is the next step in the process for this ICR?

EPA will consider the comments received and amend the ICRs as appropriate. The final ICR package will then be submitted to OMB for review and approval pursuant to 5 CFR 1320.12. EPA will issue another **Federal Register** notice pursuant to 5 CFR 1320.5(a)(1)(iv) to announce the submission of this ICR to OMB and the opportunity for the public to submit additional comments for OMB consideration. If you have any questions about this ICR or the approval process in general, please contact the person listed under **FOR FURTHER INFORMATION CONTACT**.

Authority: 44 U.S.C. 3501 *et seq.*

Dated: March 25, 2016.

James Jones,

Assistant Administrator, Office of Chemical Safety and Pollution Prevention.

[FR Doc. 2016–07490 Filed 4–1–16; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OW–2004–0015; FRL–9944–45–OW]

Proposed Information Collection Request; Comment Request; Clean Water Act State Revolving Fund Program

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The U.S. Environmental Protection Agency (EPA) is planning to submit a request to renew an existing information collection request (ICR), "Clean Water State Revolving Fund Program" (EPA ICR No. 1391.10, OMB Control No. 2040–0118), to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act (PRA). Before doing so, EPA is soliciting public comments on specific aspects of the proposed information collection as described below. This is a proposed extension of the ICR, which is currently approved through July 31, 2016. An Agency may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number.

DATES: Comments must be submitted on or before June 3, 2016.

ADDRESSES: Submit your comments, referencing Docket ID No. EPA–HQ–OW–2004–0015, online using *www.regulations.gov* (our preferred method), by email to *ow-docket@epa.gov,* or by mail to: EPA Docket Center, Environmental Protection Agency, Mail Code 28221T, 1200 Pennsylvania Ave. NW., Washington, DC 20460.

EPA's policy is that all comments received will be included in the public docket without change, including any personal information provided, unless the comment includes profanity, threats, information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute.

FOR FURTHER INFORMATION CONTACT: Mark Mylin, Municipal Support Division, Office of Wastewater Management, 4204M, Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460; telephone number: 202–564–0607; email address: *mylin.mark@epa.gov.*

SUPPLEMENTARY INFORMATION: Supporting documents which explain in detail the information that the EPA will be collecting are available in the public docket for this ICR, docket number EPA–HQ–OW–2004–0015. The docket can be viewed online at *www.regulations.gov* or in person at the EPA Docket Center, WJC West, Room 3334, 1301 Constitution Ave. NW., Washington, DC. The telephone number for the Docket Center is 202–566–1744. For additional information about EPA's public docket, visit *http://www.epa.gov/dockets.*

Pursuant to section 3506(c)(2)(A) of the PRA (44 U.S.C. 3501 *et seq.*), EPA is soliciting comments and information to enable it to:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility;
- evaluate the accuracy of the Agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- enhance the quality, utility and clarity of the information to be collected; and
- minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated electronic, mechanical or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

EPA will consider the comments received and amend the ICR as appropriate. The final ICR package will then be submitted to OMB for review and approval. At that time, EPA will issue another **Federal Register** notice to announce the submission of the ICR to OMB and the opportunity to submit additional comments to OMB.

Abstract: The Clean Water State Revolving Funds (CWSRF) were established by the 1987 amendments to the Clean Water Act (CWA) as a financial assistance program for a wide range of wastewater infrastructure and other water quality projects. The 1987 amendments added Title VI to the CWA, enabling EPA to provide grants to all 50 states and Puerto Rico to capitalize CWSRFs. The CWSRFs can provide loans and other forms of assistance for a wide array of projects, including construction of wastewater treatments facilities, green infrastructure projects, agricultural best management practices, and other water quality projects. Eligible borrowers of CWSRF funding range from municipalities to nonprofit organizations and other private entities. Recently, Title VI of the CWA was amended in 2014 by the Water Resources Reform and Development Act (WRRDA). Additional information about the CWSRFs is available at *http://www.epa.gov/cwsrf/learn-about-clean-water-state-revolving-fund-cwsrf.*

This ICR renews the Office of Management and Budget (OMB) Number 2040–0118 CWSRF ICR and provides updated estimates of the reporting burden associated with the information collection activities. The updated estimates are based on EPA's most recent public consultation and capture the estimated impact of the WRRDA amendments.

The individual information collections covered under this ICR are briefly described as follows:

Capitalization Grant Agreement/Intended Use Plan

The Capitalization Grant Agreement is the principal instrument by which a CWSRF commits to manage its revolving fund program in conformity with the requirements of the Clean Water Act. The grant agreement contains or incorporates by reference the intended use plan, application materials, required certifications, and other documentation required by EPA. The intended use plan describes how a CWSRF program intends to use its funds for the upcoming year to meet the objectives of the Clean Water Act (CWA).

Annual Report

The annual report indicates how the CWSRF has met its goals and objectives of the previous state fiscal year as stated in the grant agreement and, more specifically, in the intended use plan. The report provides information on loan recipients, loan amounts, loan terms, project categories of eligible costs, and similar data on other forms of assistance.

Annual Audit

The CWA requires a CWSRF to undergo an annual audit. Though an audit conducted under the Single Audit Act meets this requirement, EPA still recommends that a CWSRF also undergo a separate independent audit as a best management practice. The audit must contain an opinion on the financial condition of the CWSRF program, a report on its internal controls, and a report on compliance with applicable laws and the CWA.

Clean Water National Information Management System (CWNIMS) and CWSRF Benefits Reporting (CBR)

To meet the CWA objective of "promoting the efficient use of fund resources," states must enter financial data, including project disbursements, into the CWNIMS database on an annual basis. This publicly available information is used by the EPA to assess compliance with the CWSRFs' mandate to use all funds in an "expeditious and timely" manner and achieve the objectives of the CWA. Project level data is collected on a quarterly basis using the CBR System to record projected environmental results from CWSRF projects.

Public Awareness Policy

Per EPA Grants Policy Issuance (GPI) 14–02: Enhancing Public Awareness of EPA Assistance Agreements, CWSRF borrowers must publicize the EPA's involvement in project funding only up to the funding amount in each year's capitalization grant. The CWSRFs have various options to meet this requirement.

With the exception of the public awareness policy, the respondents for the information collection activities are the state environmental departments, and/or finance agencies responsible for operating the CWSRFs. The public awareness policy directly impacts CWSRFs borrowers that are designated as recipients of federal funds. The burden associated with the public awareness policy may have an impact on small entities. However, this impact is mitigated by the fact that the CWSRFs have flexibility in determining which borrowers must comply with this requirement.

Form Numbers: None.

Respondents/affected entities: Entities affected by this action are state environmental departments, and/or finance agencies responsible for operating the CWSRFs and eligible CWSRF borrowers.

Respondent's obligation to respond: Required to obtain or retain a benefit per Title VI of CWA as amended by WRRDA.

Estimated number of respondents: 51 state environmental departments and/or finance agencies (per year); 393 eligible CWSRF borrowers (per year).

Frequency of response: Varies by requirement (*i.e.,* quarterly, semi-annually and annually).

Total estimated burden: 57,376 hours (per year). Burden is defined at 5 CFR 1320.03(b).

Total estimated cost: $6,074,741 (per year).

Changes in Estimates: This renewal adds two information collections activities not included in the previous version of the ICR. Specifically, the renewal includes the additional burden associated with the EPA requirement that the CWSRFs submit data into the CWNIMS and CBR databases on a recurring basis. The renewal also reflects the additional burden related to the recently released public awareness policy, directing CWSRF borrowers that receive federal funds to publicize EPA's role in funding the projects.

Though these information collection activities add additional burden, the total estimated reporting burden under this renewal is significantly lower compared to the previously approved ICR. The estimate of the annual burden has been decreased by 748,471 hours while the total annual cost burden has been decreased by $17,744,006. This significant revision is due to the removal of the burden associated with CWSRF applications and ongoing ARRA reporting.

Dated: March 25, 2016.

Sheila E. Frace,

Acting Director, Office of Wastewater Management.

[FR Doc. 2016–07667 Filed 4–1–16; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OGC–2016–0172; FRL–9944–41–OGC]

Proposed Consent Decree, Clean Air Act Citizen Suit

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of proposed consent decree; request for public comment.

SUMMARY: In accordance with section 113(g) of the Clean Air Act, as amended ("CAA" or the "Act"), notice is hereby given of a proposed consent decree to address a lawsuit filed by Center for Biological Diversity, Center for Environmental Health, and Neighbors for Clean Air ("Plaintiffs") in the United States District Court for the Northern District of California: *Center for Biological Diversity, et al.* v. *EPA,* No. 4:15–cv–4663–SBA (N.D. CA.). On December 14, 2015, Plaintiffs filed a First Amended Complaint alleging that Gina McCarthy, in her official capacity as Administrator of the United States Environmental Protection Agency ("EPA"), failed to perform specific duties mandated by the CAA. First, Plaintiffs allege that EPA failed to make a finding concerning whether the State of California has made a complete state implementation plan ("SIP") submission to address nonattainment new source review ("NNSR") requirements related to the 2006 fine particulate matter ("PM2.5") National Ambient Air Quality Standard ("NAAQS") for El Dorado and Yolo-Solano air districts in California. Second, Plaintiffs allege that EPA failed to take final action to approve, disapprove, or conditionally approve, in whole or in part, certain complete SIP submissions from the States of Arizona, California, Idaho, Oregon, and Utah intended to address NNSR or other specific requirements related to the 2006 $PM_{2.5}$ NAAQS for certain designated nonattainment areas. Third, Plaintiffs allege that EPA has failed to meet a duty to promulgate a federal implementation plan ("FIP") for the State of Montana with respect to SIP requirements pertaining to state boards that approve permits or enforcement orders, or to the head of an executive agency with similar powers. The proposed consent decree would establish deadlines for EPA to take certain specified actions.

DATES: Written comments on the proposed consent decree must be received by *May 4, 2016.*

ADDRESSES: Submit your comments, identified by Docket ID number EPA–HQ–OGC–2016–0172, online at *www.regulations.gov* (EPA's preferred method); by email to *oei.docket@epa.gov;* by mail to EPA Docket Center, Environmental Protection Agency, Mailcode: 2822T, 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001; or by hand delivery or courier to EPA Docket Center, EPA West, Room 3334, 1301 Constitution Ave. NW., Washington, DC, between 8:30 a.m. and 4:30 p.m. Monday through Friday, excluding legal holidays. Comments on a disk or CD–ROM should be formatted in Word or ASCII file, avoiding the use of special characters and any form of encryption, and may be mailed to the mailing address above.

FOR FURTHER INFORMATION CONTACT: Geoffrey L. Wilcox, Air and Radiation Law Office (2344A), Office of General Counsel, U.S. Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone: (202) 564–5601; fax number: (202) 564–5603; email address: *wilcox.geoffrey@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Additional Information About the Proposed Consent Decree

The proposed consent decree would resolve a lawsuit filed by the Plaintiffs seeking to compel EPA to take various actions required under CAA. The proposed consent decree would establish deadlines by which EPA must take certain actions specified in order to resolve the claims in the First Amended Complaint. Those actions are described generally below; see the proposed consent decree for the specific details.

First, Plaintiffs allege that EPA failed to meet a duty under section 110(k)(1)(B) to make a finding concerning whether the State of California has made a complete state implementation plan ("SIP") submission to address nonattainment new source review ("NNSR") requirements related to the 2006 fine particulate matter ("PM2.5") National Ambient Air Quality Standard ("NAAQS") for El Dorado and Yolo-Solano air districts in California. In the proposed consent decree, EPA agrees to take action to determine whether or not the state has made a complete SIP submission to address these requirements for each of these two areas by no later than May 30, 2016.

Second, Plaintiffs allege that EPA failed to meet a duty under section 110(k) to take final action to approve, disapprove, or conditionally approve, in whole or in part, certain complete SIP submissions from the States of Arizona, California, Idaho, Oregon, and Utah intended to address NNSR or other specific requirements related to the 2006 $PM_{2.5}$ NAAQS for certain designated nonattainment areas. In the proposed consent decree, EPA agrees to take final action under section 110(k)(2)–(4) on each of the specific SIP submissions identified in the table in paragraph 1(b) of the proposed consent decree. The dates for final action by EPA for each of these SIP submissions are likewise specified in the table in paragraph 1(b) of the proposed consent decree.

Third, Plaintiffs allege that EPA has failed to meet a duty under section 110(c) to promulgate a federal implementation plan ("FIP") for the State of Montana with respect to requirements of section 110(a)(2)(E)(ii) and section 128 pertaining to state boards that approve permits or enforcement orders, or to the head of an executive agency with similar powers. In the proposed consent decree, EPA agrees to take final action no later than September 30, 2016, with respect to this claim.

For all of the actions governed by the proposed consent decree, EPA would be required to deliver the notice to the Office of Federal Register for review and publication within 15 days of signature.

The proposed consent decree is in the docket for this action. For a period of thirty (30) days following the date of publication of this notice, the Agency will accept written comments relating to the proposed consent decree from persons who are not named as parties or intervenors to the litigation in question. EPA or the Department of Justice may withdraw or withhold consent to the proposed consent decree if the comments disclose facts or considerations that indicate that such consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the Act. Unless EPA or the Department of Justice determines that consent to this proposed consent decree should be withdrawn, the terms of the consent decree will be affirmed.

II. Additional Information About Commenting on the Proposed Consent Decree

A. How can I get a copy of the proposed consent decree?

The official public docket for this action (identified by EPA–HQ–OGC–2016–0172) contains a copy of the proposed consent decree. The official public docket is available for public viewing at the Office of Environmental Information (OEI) Docket in the EPA Docket Center, EPA West, Room 3334, 1301 Constitution Ave. NW., Washington, DC. The EPA Docket

Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the OEI Docket is (202) 566–1752.

An electronic version of the public docket is available through *www.regulations.gov.* You may use *www.regulations.gov* to submit or view public comments, access the index listing of the contents of the official public docket, and access those documents in the public docket that are available electronically. Once in the system, key in the appropriate docket identification number then select "search".

It is important to note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing online at *www.regulations.gov* without change, unless the comment contains copyrighted material, CBI, or other information whose disclosure is restricted by statute. Information claimed as CBI and other information whose disclosure is restricted by statute is not included in the official public docket or in the electronic public docket. EPA's policy is that copyrighted material, including copyrighted material contained in a public comment, will not be placed in EPA's electronic public docket but will be available only in printed, paper form in the official public docket. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the EPA Docket Center.

B. How and to whom do I submit comments?

You may submit comments as provided in the **ADDRESSES** section. Please ensure that your comments are submitted within the specified comment period. Comments received after the close of the comment period will be marked "late." EPA is not required to consider these late comments.

If you submit an electronic comment, EPA recommends that you include your name, mailing address, and an email address or other contact information in the body of your comment and with any disk or CD ROM you submit. This ensures that you can be identified as the submitter of the comment and allows EPA to contact you in case EPA cannot read your comment due to technical difficulties or needs further information on the substance of your comment. Any identifying or contact information provided in the body of a comment will be included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

Use of the *www.regulations.gov* Web site to submit comments to EPA electronically is EPA's preferred method for receiving comments. The electronic public docket system is an "anonymous access" system, which means EPA will not know your identity, email address, or other contact information unless you provide it in the body of your comment. In contrast to EPA's electronic public docket, EPA's electronic mail (email) system is not an "anonymous access" system. If you send an email comment directly to the Docket without going through *www.regulations.gov,* your email address is automatically captured and included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket.

Dated: March 23, 2016.

Lorie J. Schmidt,

Associate General Counsel.

[FR Doc. 2016–07491 Filed 4–1–16; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OW–2015–0753; FRL 9944–46–OW]

Recommended Aquatic Life Ambient Water Quality Criteria for Cadmium—2016

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of availability.

SUMMARY: The Environmental Protection Agency (EPA) is announcing the release of recommended aquatic life water quality criteria for cadmium. EPA has updated its national recommended ambient water quality criteria for cadmium in order to reflect the latest scientific information, and current EPA policies and methods. EPA's water quality criteria for cadmium provides recommendations to states and tribes authorized to establish water quality standards under the Clean Water Act. In adopting water quality standards, states set exposure protections for aquatic life; acute exposure to cadmium results in lethality, while chronic exposure to cadmium negatively impacts growth, development, behavior, reproduction, and immune and endocrine systems in aquatic life. Cadmium enters the environment by natural and human processes, however, human sources, such as mining and urban processes, are responsible for contributing approximately 90 percent of the cadmium found in surface waters.

FOR FURTHER INFORMATION CONTACT: Mike Elias, Health and Ecological Criteria Division, Office of Water (Mail Code 4304T), Environmental Protection Agency, 1200 Pennsylvania Avenue NW., Washington, DC 20460; telephone number: (202) 566–0120; email address: *elias.mike@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. How can I get copies of this document and other related information?

1. Docket. EPA has established a docket for this action under Docket ID No. EPA–HQ–OW–2015–0753. Publicly available docket materials are available either electronically through *www.regulations.gov* or in hard copy at the Water Docket in the EPA Docket Center, (EPA/DC) EPA West, Room 3334, 1301 Constitution Ave. NW., Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the Water Docket is (202) 566–2426.

2. Electronic Access. You may access this **Federal Register** document electronically from the Government Printing Office under the "**Federal Register**" listings on FDSys (*http://www.gpo.gov/fdsys/browse/collection.action?collectionCode=FR).*

II. What are EPA's recommended water quality criteria?

EPA's recommended water quality criteria are scientifically derived numeric values that protect aquatic life or human health from the deleterious effects of pollutants in ambient water. Section 304(a)(1) of the Clean Water Act (CWA) directs EPA to develop and publish and, from time to time, revise criteria for protection of aquatic life and human health that accurately reflect the latest scientific knowledge. Water quality criteria developed under section 304(a) are based solely on data and the latest scientific knowledge on the relationship between pollutant concentrations and environmental and human health effects. Section 304(a) criteria do not reflect consideration of economic impacts or the technological feasibility of meeting pollutant concentrations in ambient water.

EPA's recommended section 304(a) criteria provide technical information to states and authorized tribes in adopting water quality standards (WQS) that ultimately provide a basis for assessing water body health and controlling discharges or releases of pollutants. Under the CWA and its implementing regulations, states and authorized tribes are to adopt water quality criteria to protect designated uses (*e.g.,* public water supply, aquatic life, recreational use, or industrial use). EPA's recommended water quality criteria do not substitute for the CWA or regulations, nor are they regulations themselves. EPA's recommended criteria do not impose legally binding requirements. States and authorized tribes have the discretion to adopt, where appropriate, other scientifically defensible water quality criteria that differ from these recommendations.

III. What is cadmium and why is EPA concerned about it?

Cadmium is a naturally occurring metal found in mineral deposits and distributed widely at low concentrations in the environment. Cadmium's primary industrial uses are for the manufacturing of batteries, pigments, plastic stabilizers, metal coatings, alloys and electronics. Recently, cadmium has been used in manufacturing nanoparticles (quantum dots) for use in solar cells and color displays. Cadmium is a non-essential metal with no biological function in aquatic life. Acute exposure causes mortality. Chronic exposure leads to adverse effects on growth, reproduction, immune and endocrine systems, development and behavior in aquatic organisms.

IV. Information on the Aquatic Life Ambient Water Quality Criteria for Cadmium

EPA prepared an update of the chronic aquatic life criteria document for cadmium based on the latest scientific information and current EPA policies and methods, including EPA's *Guidelines for Deriving Numerical National Water Quality Criteria for the Protection of Aquatic Organisms and Their Uses* (1985) (EPA/R–85–100) and *Guidelines for Ecological Risk Assessment* (1998) (EPA/630/R–95/002F). The 2016 updated criteria include new data for 75 species and 49 genera not previously represented. The freshwater acute criterion was derived to be protective of aquatic species and further lowered to protect the commercially and recreationally important rainbow trout, consistent with procedures described in EPA's current aquatic life criteria guidelines. The freshwater acute value is slightly lower (*i.e.,* more stringent) than the 2001 acute criterion for dissolved cadmium. The freshwater chronic criterion is slightly higher (*i.e.,* less stringent) compared to the 2001 criterion for dissolved cadmium; this modest increase is primarily due to the inclusion of four new genera, and the reanalysis of other data.

The estuarine/marine acute criterion for dissolved cadmium is slightly more stringent than the 2001 recommended criterion, which is primarily due to the addition of new sensitive genera. Changes in suggested values between 2001 and 2016 can be found in Table 1 below.

TABLE 1—SUMMARY OF 2001 AND 2016 AQUATIC LIFE AWQC FOR CADMIUM

	2016 AWQC update		2001 AWQC	
	Acute (1-hour, dissolved Cd)[c]	Chronic (4-day, dissolved Cd)	Acute (1-day, dissolved Cd)	Chronic (4-day, dissolved Cd)
Freshwater (Total Hardness = 100 mg/L as $CaCO_3$)[a]	1.8 μg/L[b]	0.72 μg/L	2.0 μg/L[b]	0.25 μg/L.
Estuarine/marine	33 μg/L	7.9 μg/L	40 μg/L	8.8 μg/L.

[a] Freshwater acute and chronic criteria are hardness-dependent and were normalized to a hardness of 100 mg/L as $CaCO_3$ to allow the presentation of representative criteria values.

[b] Lowered to protect the commercially and recreationally important species (rainbow trout), as per the 1985 Guidelines, Stephen *et al.* (1985).

[c] The duration of the 2016 acute criteria was changed to 1-hour to reflect the 1985 Guidelines-based recommended acute duration.

V. What is the relationship between the water quality criteria and state or tribal water quality standards?

As part of the WQS triennial review process defined in section 303(c)(1) of the CWA, the states and authorized tribes are responsible for maintaining and revising WQS. Standards consist of designated uses, water quality criteria to protect those uses, a policy for antidegradation, and may include general policies for application and implementation. Section 303(c)(1) requires states and authorized tribes to review and modify, if appropriate, their WQS at least once every three years.

States and authorized tribes must adopt water quality criteria that protect designated uses. Protective criteria are based on a sound scientific rationale and contain sufficient parameters or constituents to protect the designated uses. Criteria may be expressed in either narrative or numeric form. States and authorized tribes have four options when adopting water quality criteria for which EPA has published section 304(a) criteria. They may:

(1) Establish numerical values based on recommended section 304(a) criteria;

(2) Adopt section 304(a) criteria modified to reflect site-specific conditions;

(3) Adopt criteria derived using other scientifically defensible methods; or

(4) Establish narrative criteria where numeric criteria cannot be established or to supplement numerical criteria (40 CFR 131.11(b)).

EPA's regulation at 40 CFR 131.20(a) provides that if a state does not adopt new or revised criteria parameters for which EPA has published new or updated recommendations, then the state shall provide an explanation when it submits the results of its triennial review to the Regional Administrator consistent with CWA section 303(c)(1). The updated cadmium criteria supersede EPA's previous 304(a) criteria for cadmium. Consistent with 40 CFR 131.21, new or revised water quality criteria adopted into law or regulation by states and authorized tribes on or after May 30, 2000 are applicable water quality standards for CWA purposes only after EPA approval.

VI. Additional Information

EPA conducted a contractor-led and independent external peer review of the draft Aquatic Life Ambient Water Quality Criteria for Cadmium document in October 2015. This document was released for 60 day public comment in 2016 and has been updated accordingly. The document may be found at: *http://www.regulations.gov.*

Dated: March 28, 2016.

Joel Beauvais,

Deputy Assistant Administrator, Office of Water.

[FR Doc. 2016–07647 Filed 4–1–16; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

[BAC 6735–01]

Sunshine Act Notice

March 30, 2016.

TIME AND DATE: 10:00 a.m., Wednesday, April 20, 2016.

PLACE: The Richard V. Backley Hearing Room, Room 511N, 1331 Pennsylvania Avenue NW., Washington, DC 20004 (enter from F Street entrance).

STATUS: Open.

MATTERS TO BE CONSIDERED: The Commission will hear oral argument in the matter *Secretary of Labor* v. *The American Coal Company,* Docket Nos. LAKE 2011–701, et al. (Issues include whether the Judge erred by not requiring that the Secretary prove by a preponderance of the evidence that the amounts of proposed penalties based on special assessments were appropriate.)

Any person attending this oral argument who requires special accessibility features and/or auxiliary aids, such as sign language interpreters, must inform the Commission in advance of those needs. Subject to 29 CFR 2706.150(a)(3) and 2706.160(d).

CONTACT PERSON FOR MORE INFO: Emogene Johnson (202) 434–9935/(202) 708–9300 for TDD Relay/1–800–877–8339 for toll free.

Sarah L. Stewart,

Deputy General Counsel.

[FR Doc. 2016–07690 Filed 3–31–16; 11:15 am]

BILLING CODE 6735–01–P

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

[BAC 6735–01]

Sunshine Act Notice

March 30, 2016.

TIME AND DATE: 10:00 a.m., Thursday, April 21, 2016.

PLACE: The Richard V. Backley Hearing Room, Room 511N, 1331 Pennsylvania Avenue NW., Washington, DC 20004 (enter from F Street entrance).

STATUS: Open.

MATTERS TO BE CONSIDERED: The Commission will consider and act upon the following in open session: *Secretary of Labor* v. *The American Coal Company,* Docket Nos. LAKE 2011–701, et al. (Issues include whether the Judge erred by not requiring that the Secretary prove by a preponderance of the evidence that the amounts of proposed penalties based on special assessments were appropriate.)

Any person attending this meeting who requires special accessibility features and/or auxiliary aids, such as sign language interpreters, must inform the Commission in advance of those needs. Subject to 29 CFR 2706.150(a)(3) and 2706.160(d).

CONTACT PERSON FOR MORE INFO: Emogene Johnson (202) 434–9935/(202) 708–9300 for TDD Relay/1–800–877–8339 for toll free.

Sarah L. Stewart,

Deputy General Counsel.

[FR Doc. 2016–07691 Filed 3–31–16; 11:15 am]

BILLING CODE 6735–01–P

FEDERAL RESERVE SYSTEM

Proposed Agency Information Collection Activities; Comment Request

AGENCY: Board of Governors of the Federal Reserve System.

SUMMARY: On June 15, 1984, the Office of Management and Budget (OMB) delegated to the Board of Governors of the Federal Reserve System (Board) its approval authority under the Paperwork Reduction Act (PRA), to approve of and assign OMB numbers to collection of information requests and requirements conducted or sponsored by the Board. Board-approved collections of information are incorporated into the official OMB inventory of currently approved collections of information. Copies of the PRA Submission, supporting statements and approved collection of information instruments are placed into OMB's public docket files. The Federal Reserve may not conduct or sponsor, and the respondent is not required to respond to, an information collection that has been extended, revised, or implemented on or after October 1, 1995, unless it displays a currently valid OMB number.

DATES: Comments must be submitted on or before June 3, 2016.

ADDRESSES: You may submit comments, identified by *FR 4022,* by any of the following methods:

- *Agency Web site: http://www.federalreserve.gov.* Follow the instructions for submitting comments at *http://www.federalreserve.gov/apps/foia/proposedregs.aspx* .
- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Email: regs.comments@federalreserve.gov.* Include OMB number in the subject line of the message.
- *FAX:* (202) 452–3819 or (202) 452–3102.
- *Mail:* Robert deV. Frierson, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue NW., Washington, DC 20551.

All public comments are available from the Board's Web site at *http://www.federalreserve.gov/apps/foia/proposedregs.aspx* as submitted, unless modified for technical reasons. Accordingly, your comments will not be edited to remove any identifying or contact information. Public comments may also be viewed electronically or in paper form in Room 3515, 1801 K Street (between 18th and 19th Streets NW.) Washington, DC 20006 between 9:00 a.m. and 5:00 p.m. on weekdays.

Additionally, commenters may send a copy of their comments to the OMB Desk Officer—Shagufta Ahmed—Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 10235, 725 17th Street NW., Washington, DC 20503 or by fax to (202) 395–6974.

FOR FURTHER INFORMATION CONTACT: A copy of the PRA OMB submission, including the proposed reporting form and instructions, supporting statement, and other documentation will be placed into OMB's public docket files, once approved. These documents will also be made available on the Federal Reserve Board's public Web site at: *http://www.federalreserve.gov/apps/reportforms/review.aspx* or may be requested from the agency clearance officer, whose name appears below.

Federal Reserve Board Clearance Officer—Nuha Elmaghrabi—Office of the Chief Data Officer, Board of Governors of the Federal Reserve System, Washington, DC 20551 (202) 452–3829. Telecommunications Device for the Deaf (TDD) users may contact (202) 263–4869, Board of Governors of the Federal Reserve System, Washington, DC 20551.

SUPPLEMENTARY INFORMATION:

Request for Comment on Information Collection Proposal

The following information collection, which is being handled under this delegated authority, has received initial Board approval and is hereby published for comment. At the end of the comment period, the proposed information collection, along with an analysis of comments and recommendations received, will be submitted to the Board for final approval under OMB delegated authority. Comments are invited on the following:

a. Whether the proposed collection of information is necessary for the proper performance of the Federal Reserve's functions; including whether the information has practical utility;

b. The accuracy of the Federal Reserve's estimate of the burden of the proposed information collection, including the validity of the methodology and assumptions used;

c. Ways to enhance the quality, utility, and clarity of the information to be collected;

d. Ways to minimize the burden of information collection on respondents, including through the use of automated collection techniques or other forms of information technology; and

e. Estimates of capital or start up costs and costs of operation, maintenance, and purchase of services to provide information.

Proposal to Approve Under OMB Delegated Authority the Extension for Three Years, Without Revision, of the Following Report

Report title: Recordkeeping Requirements Associated with the Interagency Statement on Complex Structured Finance Activities.

Agency form number: FR 4022.

OMB control number: 7100–0311.

Frequency: Annual.

Reporters: State member banks, bank holding companies, and U.S. branches and agencies of foreign banks.

Estimated annual reporting hours: 180 hours.

Estimated average hours per response: 10 hours.

Number of respondents: 18 respondents.

General description of report: Sections 11(a), 11(i), 21, and 25 of the Federal Reserve Act (12 U.S.C. 248(a), 248(i), 483, and 602) authorize the Board to issue the information collection and recordkeeping guidance associated with the Interagency Statement. In addition, section 5(c) of the Bank Holding Company Act (12 U.S.C 1844(c)), section 10(b) of the Home Owners' Loan Act (12 U.S.C. 1467a (b)(2)), and section 13(a) of the International Banking Act (12 U.S.C. 3108(a)) provide further authority for the Board to issue such rules and guidance. As a guidance document, the Interagency Statement is voluntary, although conformance with the guidance may be the subject of review during examinations of institutions engaged in CSFTs. No information is collected by the Board in connection with the Interagency Statement, so the issue of confidentiality does not ordinarily arise. Should an institution's policies or procedures adopted pursuant to the Interagency Statement be retained as part of the record of an institution's examination, the records would be exempt from disclosure under exemption (b)(8) of the Freedom of Information Act, 5 U.S.C. 552(b)(8).

Abstract: The guidance provides that state member banks, bank holding companies, and U.S. branches and agencies of foreign banks supervised by the Federal Reserve should establish and maintain policies and procedures for identifying, evaluating, assessing, documenting, and controlling risks associated with certain complex structured finance transactions (CSFTs).

A financial institution engaged in CSFTs should maintain a set of formal, firm-wide policies and procedures that are designed to allow the institution to identify, evaluate, assess, document, and control the full range of credit, market, operational, legal, and reputational risks associated with these transactions. These policies may be developed specifically for CSFTs or included in the set of broader policies governing the institution generally. A financial institution operating in foreign jurisdictions may tailor its policies and procedures as appropriate to account for, and comply with, the applicable laws, regulations, and standards of those jurisdictions.

A financial institution's policies and procedures should establish a clear framework for the review and approval of individual CSFTs. These policies and procedures should set forth the responsibilities of the personnel involved in the origination, structuring, trading, review, approval, documentation, verification, and execution of CSFTs. A financial institution should define what constitutes a new complex structured finance product and establish a control process for the approval of such new product. An institution's policies also should provide for new complex structured finance products to receive the approval of all relevant control areas that are independent of the profit center before the products are offered to customers.

Current Actions: The Federal Reserve proposes to extend, without revision, the FR 4022 information collection.

Board of Governors of the Federal Reserve System, March 30, 2016.

Robert deV. Frierson,

Secretary of the Board.

[FR Doc. 2016–07544 Filed 4–1–16; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL RESERVE SYSTEM

Proposed Agency Information Collection Activities; Comment Request

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Notice.

SUMMARY: The Board of Governors of the Federal Reserve System (Board or Federal Reserve) invites comment on a proposal to revise the FR Y–7Q by collecting fourteen new data items to monitor compliance with enhanced prudential standards for foreign banking organizations (FBOs) adopted pursuant to Subparts N and O of Regulation YY (12 CFR part 252). The proposal would require an FBO with total consolidated assets of $50 billion or more to report the new data items in order to determine whether the FBO meets capital adequacy standards at the consolidated level that are consistent with the Basel capital framework.

On June 15, 1984, the Office of Management and Budget (OMB) delegated to the Board authority under the Paperwork Reduction Act (PRA) to approve of and assign OMB control numbers to collection of information requests and requirements conducted or sponsored by the Board. In exercising this delegated authority, the Board is directed to take every reasonable step to solicit comment. In determining whether to approve a collection of information, the Board will consider all comments received from the public and other agencies.

DATES: Comments must be submitted on or before June 3, 2016.

ADDRESSES: You may submit comments, identified by *FR Y–7N, FR Y–7NS, or FR Y–7Q* by any of the following methods:

- *Agency Web site: http://www.federalreserve.gov.* Follow the instructions for submitting comments at *http://www.federalreserve.gov/apps/foia/proposedregs.aspx.*
- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Email: regs.comments@federalreserve.gov.* Include OMB number in the subject line of the message.
- *Fax:* (202) 452–3819 or (202) 452–3102.

- *Mail:* Robert deV. Frierson, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue NW., Washington, DC 20551.

All public comments are available from the Board's Web site at *http://www.federalreserve.gov/apps/foia/proposedregs.aspx* as submitted, unless modified for technical reasons. Accordingly, your comments will not be edited to remove any identifying or contact information. Public comments may also be viewed electronically or in paper form in Room MP–500 of the Board's Martin Building (20th and C Streets NW.) between 9:00 a.m. and 5:00 p.m. on weekdays.

Additionally, commenters may send a copy of their comments to the OMB Desk Officer—Shagufta Ahmed—Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 10235 725 17th Street NW., Washington, DC 20503 or by fax to (202) 395–6974.

FOR FURTHER INFORMATION CONTACT: Board Clearance Officer—Nuha Elmaghrabi—Office of the Chief Data Officer, Board of Governors of the Federal Reserve System, Washington, DC 20551 (202) 452–3829. Telecommunications Device for the Deaf (TDD) users may contact (202) 263–4869, Board of Governors of the Federal Reserve System, Washington, DC 20551.

A copy of the PRA OMB submission, including the proposed reporting form and instructions, supporting statement, and other documentation will be placed into OMB's public docket files, once approved. These documents will also be made available on the Board's public Web site at: *http://www.federalreserve.gov/apps/reportforms/review.aspx* or may be requested from the agency clearance officer, whose name appears below.

SUPPLEMENTARY INFORMATION:

Request for Comment on Information Collection Proposal

The Board invites public comment on the following information collection, which is being reviewed under authority delegated by the OMB under the PRA. Comments are invited on the following:

a. Whether the proposed collection of information is necessary for the proper performance of the Federal Reserve's functions, including whether the information has practical utility;

b. The accuracy of the Federal Reserve's estimate of the burden of the proposed information collection, including the validity of the methodology and assumptions used;

c. Ways to enhance the quality, utility, and clarity of the information to be collected;

d. Ways to minimize the burden of information collection on respondents, including through the use of automated collection techniques or other forms of information technology; and

e. Estimates of capital or startup costs and costs of operation, maintenance, and purchase of services to provide information.

Proposal To Approve Under OMB Delegated Authority the Extension for Three Years, With Revision, of the Following Report

Report title: Financial Statements of U.S. Nonbank Subsidiaries Held by Foreign Banking Organizations, Abbreviated Financial Statements of U.S. Nonbank Subsidiaries Held by Foreign Banking Organizations, and Capital and Asset Report for Foreign Banking Organizations.

Agency form number: FR Y–7N, FR Y–7NS, and FR Y–7Q.

OMB control number: 7100–0125.

Frequency: Quarterly and annually, beginning with the reporting period ending on September 30, 2016, and, for some items, March 31, 2018.

Reporters: Foreign banking organizations (FBOs).

Estimated annual reporting hours: FR Y–7N (quarterly): 1,170 hours; FR Y–7N (annual): 218 hours; FR Y–7NS: 40 hours; FR Y–7Q (quarterly): 1,360 hours; FR Y–7Q (annual): 32 hours.

Estimated average hours per response: FR Y–7N (quarterly): 6.8 hours; FR Y–7N (annual): 6.8 hours; FR Y–7NS: 1 hour; FR Y–7Q (quarterly): 2.5 hours; FR Y–7Q (annual): 1 hour.

Number of respondents: FR Y–7N (quarterly): 43; FR Y–7N (annual): 32; FR Y–7NS: 40; FR Y–7Q (quarterly): 136; FR Y–7Q (annual): 32.

General description of report: The FR Y–7Q collects consolidated regulatory capital information from all FBOs either quarterly or annually. The FR Y–7Q is filed quarterly by FBOs that have effectively elected to become U.S. financial holding companies (FHCs) and by FBOs that have total consolidated assets of $50 billion or more, regardless of FHC status. All other FBOs file the FR Y–7Q annually. The FR Y–7N and FR Y–7NS collect financial information for non-functionally regulated U.S. nonbank subsidiaries held by FBOs other than through a U.S. bank holding company (BHC), FHC, or U.S. bank. FBOs file the FR Y–7N quarterly or annually or the FR Y–7NS annually predominantly based on asset size thresholds.

This information collection is mandatory pursuant to section 5(c) of the Bank Holding Company Act (12 U.S.C. 1844(c)) and sections 8(c) and 13 of the International Banking Act (12 U.S.C. 3106(c) and 3108)). Section 165 of the Dodd-Frank Act, (12 U.S.C. 5365), directs the Federal Reserve to establish enhanced prudential standards for certain companies, including certain FBOs. The data may not be confidential in all cases. However, individual respondents may request confidential treatment for any of these reports pursuant to sections (b)(4) and (b)(6) of the Freedom of Information Act (5 U.S.C. 522(b)(4) and (b)(6)). The applicability of these exemptions would be determined on a case-by-case basis. In addition, items 8.b and 8.c in Part 1B of the FR Y–7Q involve disclosure of capital buffers imposed by an FBO's home country supervisor. While some home country supervisors do not accord confidential status to that information or do so only on a case-by-case basis, others treat this information as confidential on a blanket basis under the belief that a more selective confidential treatment could signal an FBO's financial strength or weakness and could thereby cause substantial competitive harm. Because the information on items 8.b and 8.c may or may not be public depending on the FBO's home country, the Federal Reserve would grant confidential status, pursuant to FOIA exemption 4, only on a case-by-case basis.

The Federal Reserve proposes to revise the FR Y–7Q by collecting fourteen new data items to monitor compliance with enhanced prudential standards for FBOs adopted pursuant to Subparts N and O of Regulation YY. The new data items would be used to determine whether an FBO with total consolidated assets of $50 billion or more meets capital adequacy standards at the consolidated level that are consistent with the Basel capital framework. The proposed revision would be effective September 30, 2016, and, for some items, March 31, 2018.

Regulation YY requires an FBO with total consolidated assets of $50 billion or more to certify to the Federal Reserve that it meets capital adequacy standards on a consolidated basis, as established by its home-country supervisor, that are consistent with the regulatory capital framework published by the Basel Committee on Banking Supervision (BCBS), as amended from time to time (Basel capital framework). This requirement was intended to help ensure that the consolidated capital base supporting the activities of U.S. branches and agencies remains strong, and to lessen the degree to which weaknesses at the consolidated foreign parent could undermine the financial strength of its U.S. operations.

The proposal would require an FBO with total consolidated assets of $50 billion or more to complete a new section, Part 1B, effective September 30, 2016 (with three of the proposed items effective March 31, 2018). Proposed Part 1B would contain 14 items related to home country regulatory capital ratios that would be reported on a quarterly basis. The value of each of these items would be calculated on a consolidated basis according to the methodologies established by the FBO's home-country supervisor that are consistent with the Basel capital framework, as defined in Regulation YY.[1] If the home-country supervisor has not established capital adequacy standards consistent with the Basel capital framework, the value of these items would be calculated on a pro-forma basis as if the FBO were subject to such standards.

The proposed line items that would be effective September 30, 2016, include: (1) Common equity tier 1 capital, (2) Additional tier 1 capital, (3) Tier 1 capital (sum of items 1 and 2), (4) Tier 2 capital, (5) Total risk-based capital (sum of items 3 and 4), (6) Capital conservation buffer, (7) Countercyclical capital buffer, (8) Other applicable capital buffer(s) (a) GSIB/DSIB buffer, (b) Pillar II buffer, (c) "Other" buffer, (9) Compliance with restrictions on capital distributions and discretionary bonus payments associated with a capital buffer.

The proposed line items that would be effective March 31, 2018, include: (10) Home country capital measure used in the numerator of the leverage ratio as set forth in the Basel capital framework, (11) Home country exposure measure used in the denominator of the leverage ratio as set forth in the Basel capital framework, (12) Minimum home country leverage ratio (if different from the leverage ratio in the Basel capital framework, as applicable).

Part 1A of the current FR Y–7Q form, which applies to all FBOs, collects tier 1 capital, total risk-based capital, risk-weighted assets, total consolidated assets and total combined assets of U.S. operations, net of intercompany balances and transactions between U.S. domiciled affiliates, branches, and agencies, and total U.S. non-branch assets. While the Federal Reserve does not propose to change existing items reported in Part 1A of the FR Y–7Q, the proposal would modify the instructions to clarify that an FBO would be required to report Tier 1 capital and Total risk-based capital only on Part 1B, if the FBO's home country methodologies are consistent with the Basel capital framework.

The proposal would not revise the reporting frequency for the FR Y–7Q. FBOs with total consolidated assets of less than $50 billion and that are not FHCs would only file Part 1A on an annual basis. FBOs who have elected to become FHCs and do not have $50 billion or more in total consolidated assets will file Part 1A on a quarterly basis. FBOs with total consolidated assets of $50 billion or more would complete both Part 1A *and* Part 1B on a quarterly basis.

As noted above, the Federal Reserve would propose to determine confidentiality of the proposed items on a case-by-case basis. However, the Federal Reserve notes that some jurisdictions may treat this information as confidential on a blanket basis under the belief that a more selective confidential treatment could signal an FBO's financial strength or weakness and could thereby cause substantial competitive harm. The Federal Reserve seeks comment on whether these items should qualify for confidential treatment in all cases, such that treating this information as confidential on a blanket basis would be appropriate.

The FR Y–7N and FR Y–7NS are not being revised at this time. However, the estimated number of respondents is expected to decrease as a result of the designation of U.S. intermediate holding companies (IHCs) and recent proposed reporting requirements for the IHCs.[2]

Board of Governors of the Federal Reserve System, March 30, 2016.

Robert deV. Frierson,

Secretary of the Board.

[FR Doc. 2016–07545 Filed 4–1–16; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL RESERVE SYSTEM

Proposed Agency Information Collection Activities; Comment Request

AGENCY: Board of Governors of the Federal Reserve System.

SUMMARY: On June 15, 1984, the Office of Management and Budget (OMB) delegated to the Board of Governors of the Federal Reserve System (Board) its approval authority under the Paperwork Reduction Act (PRA), to approve of and assign OMB numbers to collection of information requests and requirements conducted or sponsored by the Board. Board-approved collections of information are incorporated into the official OMB inventory of currently approved collections of information. Copies of the PRA Submission, supporting statements and approved collection of information instruments are placed into OMB's public docket files. The Federal Reserve may not conduct or sponsor, and the respondent is not required to respond to, an information collection that has been extended, revised, or implemented on or after October 1, 1995, unless it displays a currently valid OMB number.

DATES: Comments must be submitted on or before June 3, 2016.

ADDRESSES: You may submit comments, identified by *FR 1379, FR 2060,* or *FR 4031* by any of the following methods:

- *Agency Web site*: *http://www.federalreserve.gov.* Follow the instructions for submitting comments at *http://www.federalreserve.gov/apps/foia/proposedregs.aspx* .
- *Federal eRulemaking Portal*: *http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Email*: *regs.comments@federalreserve.gov.* Include OMB number in the subject line of the message.
- *FAX*: (202) 452–3819 or (202) 452–3102.
- *Mail*: Robert deV. Frierson, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue NW., Washington, DC 20551.

All public comments are available from the Board's Web site at *http://www.federalreserve.gov/apps/foia/proposedregs.aspx* as submitted, unless modified for technical reasons. Accordingly, your comments will not be edited to remove any identifying or contact information. Public comments may also be viewed electronically or in paper form in Room 3515, 1801 K Street (between 18th and 19th Streets NW.,) Washington, DC 20006 between 9:00 a.m. and 5:00 p.m. on weekdays.

Additionally, commenters may send a copy of their comments to the OMB Desk Officer—Shagufta Ahmed—Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 10235 725 17th Street NW., Washington, DC 20503 or by fax to (202) 395–6974.

FOR FURTHER INFORMATION CONTACT: A copy of the PRA OMB submission, including the proposed reporting form and instructions, supporting statement, and other documentation will be placed into OMB's public docket files, once approved. These documents will also be made available on the Federal Reserve

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[1] *See* 12 CFR part 252.143 and 252.154.

[2] 81 FR 6265 (February 5, 2016).

Board's public Web site at: *http://www.federalreserve.gov/apps/reportforms/review.aspx* or may be requested from the agency clearance officer, whose name appears below.

Federal Reserve Board Clearance Officer—Nuha Elmaghrabi—Office of the Chief Data Officer, Board of Governors of the Federal Reserve System, Washington, DC 20551 (202) 452–3829. Telecommunications Device for the Deaf (TDD) users may contact (202) 263–4869, Board of Governors of the Federal Reserve System, Washington, DC 20551.

SUPPLEMENTARY INFORMATION:

Request for Comment on Information Collection Proposal

The following information collection, which is being handled under this delegated authority, has received initial Board approval and is hereby published for comment. At the end of the comment period, the proposed information collection, along with an analysis of comments and recommendations received, will be submitted to the Board for final approval under OMB delegated authority. Comments are invited on the following:

a. Whether the proposed collection of information is necessary for the proper performance of the Federal Reserve's functions, including whether the information has practical utility;

b. The accuracy of the Federal Reserve's estimate of the burden of the proposed information collection, including the validity of the methodology and assumptions used;

c. Ways to enhance the quality, utility, and clarity of the information to be collected;

d. Ways to minimize the burden of information collection on respondents, including through the use of automated collection techniques or other forms of information technology; and

e. Estimates of capital or start up costs and costs of operation, maintenance, and purchase of services to provide information.

Proposal to approve under OMB delegated authority the extension for three years, without revision, of the following reports:

1. *Report title:* Consumer Satisfaction Questionnaire, the Federal Reserve Consumer Help—Consumer Survey, the Consumer Online Complaint Form, and the Appraisal Complaint Form.

Agency form number: FR 1379a, FR 1379b, FR 1379c, and FR 1379d.

OMB control number: 7100–0135.

Frequency: Event generated.

Reporters: Consumers, appraisers, and financial institutions.

Estimated annual burden hours: FR 1379a: 58 hours; FR 1379b: 121 hours; FR 1379c: 982 hours; FR 1379d: 7 hours.

Estimated average hours per response: FR 1379a: 5 minutes; FR 1379b: 5 minutes; FR 1379c: 10 minutes; FR 1379d: 30 minutes.

Number of respondents: FR 1379a: 695; FR 1379b: 1,455; FR 1379c: 5,890; FR 1379d: 14.

General description of report: The Board's Legal Division has determined that the FR 1379a, b, and c are authorized by law pursuant to section 11(a) of the Federal Reserve Act (12 U.S.C. 248(a)), and sections 3(q) and 8 of the Federal Deposit Insurance Act (FDIC Act) (12 U.S.C. 1813(Q) and 1818). Additionally, the Board is authorized to collect the information on the FR 1379d pursuant to section 1103 of the Financial Institutions and Reform, Recovery, and Enforcement Act, which authorizes the Federal Financial Institutions Examination Council-Appraisal Subcommittee to "perform research, as [it] considers appropriate," for the purpose of carrying out its duties (12 U.S.C. 3335). The obligation to respond is voluntary.

The FR 1379a is not considered confidential. The FR 1379b collects the respondent's name and the respondent may provide other personal information and information regarding his or her complaint. The FR 1379c collects the respondent's third-party representative if the respondent has such a representative. The FR 1379d collects the respondent's name and the respondent may provide other personal information and information regarding his or her complaint. Thus, some of the information collected on the FR 1379b, FR 1379c, and FR 1379d may be considered confidential under the Freedom of Information Act (5 U.S.C. 552(b)(4), (b)(6), (b)(7)).

Abstract: The FR 1379a questionnaire is sent to consumers who have filed complaints with the Federal Reserve against state member banks. The information is used to assess their satisfaction with the Federal Reserve's handling and written response to their complaint at the conclusion of an investigation. The FR 1379b survey is sent to consumers who contact the Federal Reserve Consumer Help (FRCH) to file a complaint or inquiry. The information is used to determine whether consumers are satisfied with the way the FRCH handled their complaint. Consumers use the FR 1379c complaint form to electronically submit a complaint against a financial institution to the FRCH. The FR 1379d Appraisal complaint form collects information about complaints regarding a regulated institution's non-compliance with the appraisal independence standards and the Uniform Standards of Professional Appraisal Practice, including complaints from appraisers, individuals, financial institutions, and other entities. The information is necessary so that the federal agencies[1] may better assist the Federal Financial Institutions Examination Council-Appraisal Subcommittee (FFIEC–ASC)[2] in its efforts to implement Dodd-Frank Wall Street Reform and Consumer Protection Act[3] that requires a national hotline be established for appraisal related complaints.

Current Actions: The Federal Reserve proposes to extend, without revision, the FR 1379 information collection.

2. *Report title:* Survey to Obtain Information on the Relevant Market in Individual Merger Cases.

Agency form number: FR 2060.

OMB control number: 7100–0232.

Frequency: On occasion.

Reporters: Small businesses and consumers.

Estimated annual burden hours: 9 hours.

Estimated average hours per response: Small businesses: 10 minutes; Consumers: 6 minutes.

Number of respondents: Small businesses: 25; Consumers: 50.

General description of report: The FR 2060 is voluntary and authorized pursuant to the Change In Bank Control Act (12 U.S.C. 1817(j)(7)(A) and (B)), the Bank Merger Act (12 U.S.C. 1828(c)(5)), and section 3(c)(1) of the Bank Holding Company Act (12 U.S.C. 1842(c)(1)). Each of these sections require the Federal Reserve to evaluate merger and acquisition applications by banks and bank holding companies to determine the effects of proposed transactions on competition in a particular banking market. In order to make this determination, the Federal Reserve must determine the relevant market and then determine the level of competition in the market. This survey provides the data necessary to make such determinations when the Federal Reserve otherwise would not have such information.

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[1] "Agencies" include the Board of Governors of the Federal Reserve System, Federal Deposit Insurance Corporation, Office of the Comptroller of the Currency, National Credit Union Administration, and Consumer Financial Protection Bureau.

[2] Title XI of the Financial Institutions Reform, Recovery, and Enforcement Act (FIRREA) of 1989 amended the FIRIRCA Act of 1978 to create the ASC "within" the FFIEC on August 9, 1989. Pursuant to Title XI, the ASC's mission is to monitor federal, state, and appraisal industry initiatives relative to the appraisal process at federally-regulated financial institutions and maintain a national registry of appraisers eligible to perform appraisals for federally related real estate transactions. As an independent FFIEC subcommittee, the ASC is funded by fees collected through the registry. The ASC board has seven members, one from each of these agencies: OCC, FRB, FDIC, NCUA, CFPB, FHFA and U.S. Department of Housing and Urban Development (HUD). The ASC Web site may be found at *www.asc.gov/Home.aspx.*

[3] Dodd-Frank Wall Street Reform and Consumer Protection Act § 1473, Pub. L. 111–203, 124 Stat. 1376, July 21, 2010.

Information obtained from small business and individuals may be kept confidential under the Freedom of Information Act (FOIA). Information obtained from small businesses can be considered confidential under exemption (b)(4) of the FOIA because the release of information obtained from small businesses would (1) impair the Board's ability to obtain this information from entities that could not be compelled to respond, and (2) cause substantial harm to the competitive position of the entity from whom the information was obtained (5 U.S.C. 552(b)(4)). In addition, information obtained from consumers may be kept confidential under exemption (b)(6) of the FOIA because the information the survey collects is the type of information that would constitute a clearly unwarranted invasion of personal privacy (*Id.* at 552(b)(6)).

Abstract: The Federal Reserve uses this information to define relevant banking markets for specific merger and acquisition applications and to evaluate changes in competition that would result from proposed transactions, including purchase and assumption agreements. The event-generated survey is conducted by telephone and has been used no more than once per year since 1990.

Current Actions: The Federal Reserve proposes to extend, without revision, the FR 2060 information collection.

3. Report title: Notice of Branch Closure.

Agency form number: FR 4031.

OMB control number: 7100–0264.

Frequency: On occasion.

Reporters: State member banks.

Estimated annual burden hours: 247 hours.

Estimated average hours per response: Reporting requirements: 2 hours; Disclosure requirements, customer mailing: 0.75 hours and posted notice, 0.25 hours; and Recordkeeping requirements: 8 hours.

Number of respondents: Reporting requirements: 82; Disclosure requirements: customer mailing, 82 and posted notice, 82; and Recordkeeping requirements, 0.

General description of report: This information collection is mandatory pursuant to Section 42(a)(1) of the Federal Deposit Insurance Act (FDI Act) (12 U.S.C. 1831r–1(a)(1)). The Federal Reserve does not consider individual respondent data to be confidential. However, a state member bank may request confidential treatment pursuant to exemption b(4) of the Freedom of Information Act (5 U.S.C.552(b)(4)).

Abstract: The mandatory reporting, recordkeeping, and disclosure requirements regarding the closing of any branch of an insured depository institution are imposed by section 228 of the Federal Deposit Insurance Corporation Improvement Act of 1991 (FDICIA). There is no formal reporting form (the FR 4031 designation is for internal purposes only) associated with the reporting portion of this information collection; state member banks notify the Federal Reserve by letter prior to closing a branch. The Federal Reserve uses the information to fulfill its statutory obligation to supervise state member banks.

Current Actions: The Federal Reserve proposes to extend, without revision, the FR 4031 information collection.

Board of Governors of the Federal Reserve System, March 30, 2016.

Robert deV. Frierson,

Secretary of the Board.

[FR Doc. 2016–07543 Filed 4–1–16; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisitions of Shares of a Bank or Bank Holding Company

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire shares of a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than April 19, 2016

A. Federal Reserve Bank of St. Louis (David L. Hubbard, Senior Manager) P.O. Box 442, St. Louis, Missouri 63166–2034. Comments can also be sent electronically to *Comments.applications@stls.frb.org:*

1. *Teresa Sue Spangler Allemang, as Trustee of the Teresa Sue Spangler Allemang FIB Revocable Trust,* both of Hilton Head, South Carolina, to acquire voting shares of First Independent Bancshares, Inc., and thereby acquire voting shares of First Independent Bank, both in Aurora, Missouri.

B. Federal Reserve Bank of Minneapolis (Jacquelyn K. Brunmeier, Assistant Vice President) 90 Hennepin Avenue, Minneapolis, Minnesota 55480–0291:

1. *Jan Stroup, and Mary Jean Korsmo,* both of Minneapolis, Minnesota, both as members of the Jan Stroup family shareholder group; to retain voting shares of McLean Bank Holding Company, Garrison, North Dakota, and thereby indirectly retain voting shares of Bank of Turtle Lake, Turtle Lake, North Dakota; Garrison State Bank and Trust, Garrison, North Dakota; and Farmers Security Bank, Washburn, North Dakota.

C. Federal Reserve Bank of Kansas City (Dennis Denney, Assistant Vice President) 1 Memorial Drive, Kansas City, Missouri 64198–0001:

1. *Elaine M. Dittrich,* Tilden, Nebraska, as a member of the Dittrich family group and acting in concert; to acquire voting shares of Tilden Bancshares, Inc., and thereby indirectly acquire voting shares of The Tilden Bank, both in Tilden, Nebraska.

Board of Governors of the Federal Reserve System, March 30, 2016.

Michael J. Lewandowski,

Associate Secretary of the Board.

[FR Doc. 2016–07581 Filed 4–1–16; 8:45 am]

BILLING CODE 6210–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Healthcare Research and Quality

Solicitation for Nominations for Members of the U.S. Preventive Services Task Force (USPSTF)

AGENCY: Agency for Healthcare Research and Quality (AHRQ), HHS.

ACTION: Solicits nominations for new members of USPSTF.

SUMMARY: The Agency for Healthcare Research and Quality (AHRQ) invites nominations of individuals qualified to serve as members of the U.S. Preventive Services Task Force (USPSTF).

DATES: All nominations submitted in writing or electronically will be considered for appointment to the USPSTF. Nominations must be received by May 15th of a given year to be considered for appointment to begin in January of the following year.

Arrangement for Public Inspection

Nominations and applications are kept on file at the Center for Evidence and Practice Improvement, AHRQ, and are available for review during business hours. AHRQ does not reply to individual nominations, but considers all nominations in selecting members. Information regarded as private and personal, such as a nominee's social security number, home and email addresses, home telephone and fax numbers, or names of family members will not be disclosed to the public (in accord with the Freedom of Information Act, 5 U.S.C. 552(b)(6); 45 CFR 5.67).

Nomination Submissions

Nominations may be submitted in writing or electronically, but should include:

1. The applicant's current curriculum vitae and contact information, including mailing address, email address, and telephone number, and
2. A letter explaining how this individual meets the qualification requirements and how he or she would contribute to the USPSTF. The letter should also attest to the nominee's willingness to serve as a member of the USPSTF.

AHRQ will later ask persons under serious consideration for USPSTF membership to provide detailed information that will permit evaluation of possible significant conflicts of interest. Such information will concern matters such as financial holdings, consultancies, non-financial scientific interests, and research grants or contracts.

To obtain a diversity of perspectives, AHRQ particularly encourages nominations of women, members of minority populations, and persons with disabilities. Interested individuals can self-nominate. Organizations and individuals may nominate one or more persons qualified for membership on the USPSTF at any time. Individuals nominated prior to May 15, 2015, who continue to have interest in serving on the USPSTF, should be re-nominated.

Qualification Requirements

To qualify for the USPSTF and support its mission, an applicant or nominee should, at a minimum, demonstrate knowledge, expertise and national leadership in the following areas:

1. The critical evaluation of research published in peer-reviewed literature and in the methods of evidence review;
2. Clinical prevention, health promotion and primary health care; and
3. Implementation of evidence-based recommendations in clinical practice including at the clinician-patient level, practice level, and health-system level.

Additionally, the Task Force benefits from members with expertise in the following areas:

- Public health
- Health equity and the reduction of health disparities
- Application of science to health policy
- Behavioral medicine
- Communication of scientific findings to multiple audiences including health care professionals, policy makers and the general public.

Candidates with experience and skills in any of these areas should highlight them in their nomination materials.

Applicants must have no substantial conflicts of interest, whether financial, professional, or intellectual, that would impair the scientific integrity of the work of the USPSTF and must be willing to complete regular conflict of interest disclosures.

Applicants must have the ability to work collaboratively with a team of diverse professionals who support the mission of the USPSTF. Applicants must have adequate time to contribute substantively to the work products of the USPSTF.

ADDRESSES: Submit your responses either in writing or electronically to: Lydia Hill, ATTN: USPSTF Nominations, Center for Evidence and Practice Improvement, Agency for Healthcare Research and Quality, 5600 Fishers Lane, Mailstop: 06E53A, Rockville, Maryland 20857, *USPSTFmembernominations@ahrq.hhs.gov.*

Nominee Selection

Nominated individuals will be selected for the USPSTF on the basis of how well they meet the required qualifications and the current expertise needs of the USPSTF. It is anticipated that new members will be invited to serve on the USPSTF beginning in January 2017. All nominated individuals will be considered; however, strongest consideration will be given to individuals with demonstrated training and expertise in the areas of Pediatrics, Family Medicine, Internal Medicine, Obstetrics and Gynecology and Preventive Medicine. AHRQ will retain and may consider for future vacancies nominations received this year and not selected during this cycle.

Some USPSTF members without primary health care clinical experience may be selected based on their expertise in methodological issues such as meta-analysis, analytic modeling or clinical epidemiology. For individuals with clinical expertise in primary health care, additional qualifications in methodology would enhance their candidacy.

FOR FURTHER INFORMATION CONTACT: Lydia Hill at *USPSTFmembernominations@ahrq.hhs.gov*

SUPPLEMENTARY INFORMATION:

Background

Under Title IX of the Public Health Service Act, AHRQ is charged with enhancing the quality, appropriateness, and effectiveness of health care services and access to such services 42 U.S.C. 299(b). AHRQ accomplishes these goals through scientific research and promotion of improvements in clinical practice, including clinical prevention of diseases and other health conditions. See 42 U.S.C. 299(b).

The USPSTF, an independent body of experts in prevention and evidence-based medicine, works to improve the health of all Americans by making evidence-based recommendations about the effectiveness of clinical preventive services and health promotion. The recommendations made by the USPSTF address clinical preventive services for adults and children, and include screening tests, counseling services, and preventive medications.

The USPSTF was first established in 1984 under the auspices of the U.S. Public Health Service. Currently, the USPSTF is convened by the Director of AHRQ, and AHRQ provides ongoing scientific, administrative, and dissemination support for the USPSTF's operation. USPSTF members serve four year terms. New members are selected each year to replace those members who are completing their appointments.

The USPSTF is charged with rigorously evaluating the effectiveness, appropriateness and cost-effectiveness of clinical preventive services and formulating or updating recommendations regarding the appropriate provision of preventive services. See 42 U.S.C. 299b–4(a)(1). Current USPSTF recommendations and associated evidence reviews are available on the Internet (*www.uspreventiveservicestaskforce.org*).

USPSTF members currently meet three times a year for two days in the Washington, DC area. A significant portion of the USPSTF's work occurs between meetings during conference calls and via email discussions. Member duties include prioritizing topics, designing research plans, reviewing and commenting on systematic evidence reviews of evidence, discussing and making recommendations on preventive services, reviewing stakeholder comments, drafting final recommendation documents, and participating in workgroups on specific topics and methods. Members can expect to receive frequent emails, can expect to participate in multiple conference calls each month, and can expect to have periodic interaction with stakeholders. AHRQ estimates that members devote approximately 200 hours a year outside of in-person meetings to their USPSTF duties. The members are all volunteers and do not receive any compensation beyond support for travel to in person meetings.

Sharon B. Arnold,

Acting Director.

[FR Doc. 2016–07475 Filed 4–1–16; 8:45 am]

BILLING CODE P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Disease, Disability, and Injury Prevention and Control Special Emphasis Panel (SEP): Initial Review

The meeting announced below concerns the CDC National Centers for Excellence in Youth Violence Prevention: Building the Evidence for Community- and Policy-Level Prevention, RFA–CE–15–002, initial review.

SUMMARY: This publication corrects a notice that was published in the **Federal Register** on March 22, 2016, Volume 81, Number 55, page 15307. The meeting place should read as follows:

Place: Atlanta Marriott Century Center, 2000 Century Blvd. NE., Atlanta, Georgia 30345.

FOR FURTHER INFORMATION CONTACT: M. Chris Langub, Ph.D., Scientific Review Officer, CDC, 4770 Buford Highway NE., Mailstop F–80, Atlanta, Georgia 30341, Telephone: (770) 488–3585, *EEO6@cdc.gov.*

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Catherine Ramadei,

Acting Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 2016–07625 Filed 4–1–16; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Disease, Disability, and Injury Prevention and Control Special Emphasis Panel (SEP): Initial Review

In accordance with Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC) announces a meeting for the initial review of applications in response to Special Interest Project (SIP) 16–006, Environmental Scan of Oral Health and Chronic Disease Integration.

Time and Date: 11:00 a.m.–6:00 p.m., EDT, April 29, 2016 (Closed).

Place: Teleconference.

Status: The meeting will be closed to the public in accordance with provisions set forth in Section 552b(c)(4) and (6), Title 5 U.S.C., and the Determination of the Director, Management Analysis and Services Office, CDC, pursuant to Public Law 92–463.

Matters for Discussion: The meeting will include the initial review, discussion, and evaluation of applications received in response to "Environmental Scan of Oral Health and Chronic Disease Integration", SIP 16–006.

Contact Person for More Information: Jaya Raman Ph.D., Scientific Review Officer, CDC, 4770 Buford Highway, Mailstop F80, Atlanta, Georgia 30341, Telephone: (770) 488–6511, *kva5@cdc.gov.*

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Catherine Ramadei,

Acting Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 2016–07628 Filed 4–1–16; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Disease, Disability, and Injury Prevention and Control Special Emphasis Panel (SEP): Initial Review

In accordance with Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC) announces a meeting for the initial review of applications in response to Funding Opportunity Announcement (FOA) PS16–003, Evaluating Locally-Developed or Adapted (Homegrown) Combination HIV Prevention Interventions for Transgender Persons who have Sex with Men; and FOA PS16–004, Increase Access to Care for Black Men Who Have Sex with Men.

Time and Date: 10:00 a.m.–5:00 p.m., EDT, April 26–27, 2016 (Closed)

Place: Teleconference.

Status: The meeting will be closed to the public in accordance with provisions set forth in Section 552b(c)(4) and (6), Title 5 U.S.C., and the determination of the Director, Management Analysis and Services Office, CDC, pursuant to Public Law 92–463.

Matters for Discussion: The meeting will include the initial review, discussion, and evaluation of applications received in response to "Evaluating Locally-Developed or Adapted Combination HIV Prevention Interventions for Transgender Persons who have Sex with Men", FOA PS16–003; and "Increase Access to Care for Black Men Who Have Sex with Men", FOA PS16–004.

Contact Person for More Information: Gregory Anderson, M.S., M.P.H., Scientific Review Officer, CDC, 1600 Clifton Road NE., Mailstop E60, Atlanta, Georgia 30333, Telephone: (404) 718–8833.

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Catherine Ramadei,

Acting Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 2016–07627 Filed 4–1–16; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Advisory Committee to the Director (ACD), Centers for Disease Control and Prevention—Health Disparities Subcommittee (HDS)

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC) announces the following meeting of the aforementioned subcommittee:

Time and Date: 8:30 a.m.–4:30 p.m., EDT, April 28, 2016.

Place: CDC, Building 19, Rooms 256/257, 1600 Clifton Road NE., Atlanta, Georgia 30329.

Status: Open to the public, limited only by the space available. The meeting room accommodates approximately 50 people. The public is welcome to participate during the public comment period, which is tentatively scheduled from 4:00 p.m. to 4:15 p.m. This meeting is also available by teleconference. Please dial (866) 763–0273 and enter code 6158968.

Purpose: The Subcommittee will contribute to the ACD's advice to the CDC Director on strategic and other health disparities and health equity issues and provide guidance on opportunities for CDC.

Matters for Discussion: The Health Disparities Subcommittee members will discuss progress toward the Subcommittee's input to the ACD on disparity issues related to environmental health.

The agenda is subject to change as priorities dictate.

Web links:

Windows Media: *http://wm.onlinevideoservice.com/CDC1.*

Flash: *http://www.onlinevideoservice.com/clients/CDC/?mount=CDC3.*

Smart Phones and Mobile devices: *http://wowza01.sea.onlinevideoservice.com/live/CDC3/playlist.m3u8.*

If you are unable to connect using the link, copy and paste the link into your web browser.

Number for Technical Support: 404–639–3737.

Contact Person for More Information: Leandris Liburd, Ph.D., M.P.H., M.A., Designated Federal Officer, Health Disparities Subcommittee, Advisory Committee to the Director, CDC, 1600 Clifton Road, NE., M/S K–77, Atlanta, Georgia 30329 Telephone (770) 488–8343, Email: *LEL1@cdc.gov.*

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Elaine L. Baker,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 2016–07527 Filed 4–1–16; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Disease, Disability, and Injury Prevention and Control Special Emphasis Panel (SEP): Initial Review

In accordance with Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC) announces a meeting for the initial review of applications in response to Funding Opportunity Announcement (FOA), RFA–CE–16–003, Research on Prescription Opioid Use, Opioid Prescribing, and Associated Heroin Risk.

Time and Date: 8:30 a.m.–5:00 p.m., EDT, April 27–28, 2016 (Closed).

Place: Atlanta Marriott Century Center, 2000 Century Blvd. NE., Atlanta, Georgia 30345.

Status: The meeting will be closed to the public in accordance with provisions set forth in Section 552b(c)(4) and (6), Title 5 U.S.C., and the Determination of the Director, Management Analysis and Services Office, CDC, pursuant to Public Law 92–463.

Matters for Discussion: The meeting will include the initial review, discussion, and evaluation of applications received in response to "Research on Prescription Opioid Use, Opioid Prescribing, and Associated Heroin Risk", FOA RFA–CE–16–003.

Contact Person for More Information: M. Chris Langub, Ph.D., Scientific Review Officer, CDC, 4770 Buford Highway NE., Mailstop F–80, Atlanta, Georgia 30341, Telephone: (770) 488–3585, *EEO6@cdc.gov.*

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Catherine Ramadei,

Acting Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 2016–07626 Filed 4–1–16; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Subcommittee for Dose Reconstruction Reviews (SDRR), Advisory Board on Radiation and Worker Health (ABRWH or the Advisory Board), National Institute for Occupational Safety and Health (NIOSH)

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC), announces the following meeting for the aforementioned subcommittee:

Time and Date: 10:30 a.m.–5:00 p.m., EDT, April 28, 2016.

Place: Audio Conference Call via FTS Conferencing.

Status: Open to the public, but without a public comment period. The public is welcome to submit written comments in advance of the meeting, to the contact person below. Written comments received in advance of the meeting will be included in the official record of the meeting. The public is also welcome to listen to the meeting by joining the teleconference at the USA toll-free, dial-in number at 1–866–659–0537 and the pass code is 9933701.

Background: The Advisory Board was established under the Energy Employees Occupational Illness Compensation Program Act of 2000 to advise the President on a variety of policy and technical functions required to implement and effectively manage the new compensation program. Key functions of the Advisory Board include providing advice on the development of probability of causation guidelines that have been promulgated by the Department of Health and Human Services (HHS) as a final rule; advice on methods of dose reconstruction, which have also been promulgated by HHS as a final rule; advice on the scientific validity and quality of dose estimation and reconstruction efforts being performed for purposes of the compensation program; and advice on petitions to add classes of workers to the Special Exposure Cohort.

In December 2000, the President delegated responsibility for funding, staffing, and operating the Advisory Board to HHS, which subsequently delegated this authority to CDC. NIOSH implements this responsibility for CDC. The charter was issued on August 3, 2001, renewed at appropriate intervals, and will expire on August 3, 2017.

Purpose: The Advisory Board is charged with (a) providing advice to the Secretary, HHS, on the development of guidelines under Executive Order 13179; (b) providing advice to the Secretary, HHS, on the scientific validity and quality of dose reconstruction efforts performed for this program; and (c) upon request by the Secretary, HHS, advise the Secretary on whether there is a class of employees at any Department of Energy facility who were exposed to radiation but for whom it is not feasible to estimate their radiation dose, and on whether there is reasonable likelihood that such radiation doses may have endangered the health of members of this class. The Subcommittee for Dose Reconstruction Reviews was established to aid the Advisory Board in carrying out its duty to advise the Secretary, HHS, on dose reconstruction.

Matters for Discussion: The agenda for the Subcommittee meeting includes the following dose reconstruction program quality management and assurance activities: Dose reconstruction cases under review from Sets 14–18, including the Oak Ridge sites (Y–12, K–25, Oak Ridge National Laboratory, and Savannah River Site; preparation of the Advisory Board's next report to the Secretary, HHS, summarizing the results of completed dose reconstruction reviews.

The agenda is subject to change as priorities dictate.

Contact Person for More Information: Theodore Katz, Designated Federal Officer, NIOSH, CDC, 1600 Clifton Road, Mailstop E–20, Atlanta, Georgia 30333, Telephone (513) 533–6800, Toll Free 1(800) CDC–INFO, Email *ocas@cdc.gov.*

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Catherine Ramadei,

Acting Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 2016–07624 Filed 4–1–16; 8:45 am]

BILLING CODE 4163–19–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Community Living

Award of a Single Source Non-Competing Continuation Cooperative Agreement for One National Activities Grant Project Under Section 6 of the Assistive Technology Act of 1998, as Amended (ATAct)

AGENCY: Administration for Community Living, HHS.

ACTION: Notice.

SUMMARY: As a result of the Workforce Opportunity Improvement Act (Pub. L. 113–128) signed by President Obama in July 2014, the Assistive Technology Act Data Reporting and Analysis cooperative agreement with the Center for Assistive Technology Act Data Assistance (CATADA) at the University of Massachusetts—Boston, Institute for Community Inclusion transferred from the U.S. Department of Education, Rehabilitation Services Administration to the U.S. Department of Health and Human Services, Administration for Community Living (ACL). The CATADA Project is a national technical assistance grant for assistive technology programs that provides a comprehensive and state-specific, regional and national data reporting system and resources to entities funded under Section 4 of the *AT Act* to improve the reporting of data and performance measures for the required state-level and state leadership activities, and to provide appropriate information to entities not funded under the *AT Act* to improve awareness of and access to assistive technology. The Department of Health and Human Services is currently transitioning and developing the information collection instruments for the State Grant for AT programs under Section 4 of the *AT Act* to ACL.

The CATADA Project provides training and technical assistance on the use of an accessible national AT data reporting system that supports a day-to-day information collection tool and an aggregate report for the submission of federally required data and performance measures for all 56 State Grant for AT programs under the *AT Act.*

Program Name: Assistive Technology National Activities.

Award Amount: up to *$317,123* to University of Massachusetts—Boston, Institute for Community Inclusion.

Project Period: 9/30/2016 to 9/29/2017.

Award Type: Cooperative Agreement.

Statutory Authority: This program is authorized under Section 6 of the *Assistive Technology Act of 1998,* as amended (29 U.S.C. 3005).

Catalog of Federal Domestic Assistance (CFDA) Number: 93.464 Discretionary Projects.

Dates: Estimated Project Period—September 30, 2016 through September 29, 2017.

I. Program Description

The purpose of the National Activities cooperative agreement with the University of Massachusetts—Boston, Institute for Community Inclusion is to continue existing activities designed to support and improve the administration of the *AT Act.* The grantee will continue to provide state-specific, regional and national training and technical assistance concerning information reporting and analysis, develop state and national data reports on the activities carried out by the State Grant for AT programs under Section 4 of the *AT Act* and make the reports available to ACL, stakeholders and the general public.

Justification: ACL is currently working on transitioning and developing the Assistive Technology National Activities data collection instruments for the State Grant for AT programs under Section 4 of the *AT Act* to ACL. To ensure uninterrupted continuation of data reporting and analysis, ACL plans to issue a one year single source non-competing continuation cooperative agreement award to the University of Massachusetts—Boston, Institute for Community Inclusion.

II. Agency Contact

For further information or comments regarding this action, contact Lori Gerhard, U.S. Department of Health and Human Services, Administration for Community Living, Center for Integrated Programs, Office of Consumer Access and Self-Determination, 330 C Street SW., Washington, DC 20201; telephone (202) 795–7348; fax (202) 205–0414; email *Lori.Gerhard@acl.hhs.gov.*

Dated: March 29, 2016.

Kathy Greenlee,

Administrator and Assistant Secretary for Aging.

[FR Doc. 2016–07652 Filed 4–1–16; 8:45 am]

BILLING CODE 4154–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Community Living

Administration on Disabilities, President's Committee for People With Intellectual Disabilities

AGENCY: Administration for Community Living, HHS.

ACTION: Notice.

SUMMARY: The President's Committee for People with Intellectual Disabilities (PCPID) will host a webinar/conference call for its members to discuss the Committee's 2016 Report to the President (RTP). All the PCPID meetings, in any format, are open to the public. This virtual meeting will be conducted in a discussion format.

DATES: *Webinar:* Monday, May 2, 2016 from 3:00 p.m. to 4:30 p.m. (EST).

ADDRESSES: *Webinar Web page: https://meetingserver.hhs.gov/orion/joinmeeting.do?ED=PkeE_dUKbJrkcq5Y9wSWvA==.*

FOR FURTHER INFORMATION AND REASONABLE ACCOMMODATIONS NEEDS CONTACT: Dr. MJ Karimi, PCPID Team Lead, 330 C Street SW., 1108A, Washington, DC 20201. Email: *MJ.Karimie@acl.hhs.gov;* telephone: 202–79–7374; fax: 202–205–0402.

SUPPLEMENTARY INFORMATION:

Background: The PCPID Committee Members met, on February 22–23, 2016, and discussed the following four focus areas that will be included on the 2016 RTP:

Family engagement early on in the process to support high expectations for students with disabilities
Federal education policies and enforcement strategies to end segregation in schools
Transition as a critical area for pathways to higher education and career development
Self-determination/Supported decision-making from early childhood throughout the individual's lifespan

The general purpose of this meeting is to provide the members with an opportunity to further discuss the recommendation sections of the 2016 RTP.

Webinar/Conference Call: The webinar is scheduled for May 2, 2016, 3:00 p.m. to 4:30 p.m. (EST) and may end early if discussions are finished.

Instructions to Participate in the Webinar/Conference Call on Monday, May 2, 2016:

1. Enter the following WebEx Link: *https://meetingserver.hhs.gov/orion/joinmeeting.do?ED=PkeE_dUKbJrkcq5Y9wSWvA==*
2. Click on the "join" button on the page
3. Enter your name and email address
4. Follow additional instructions as provided by WebEx. This WebEx does not require a password.
5. Please dial: (888) 469–0940; Pass Code: 5315454 (you should put your phone on mute during the meeting)

Background Information on the Committee: The PCPID acts in an advisory capacity to the President and the Secretary of Health and Human Services on a broad range of topics relating to programs, services and support for individuals with intellectual disabilities. The PCPID Executive Order stipulates that the Committee shall: (1) Provide such advice concerning intellectual disabilities as the President or the Secretary of Health and Human Services may request; and (2) provide advice to the President concerning the following for people with intellectual disabilities: (A) Expansion of educational opportunities; (B) promotion of homeownership; (C) assurance of workplace integration; (D) improvement of transportation options; (E) expansion of full access to community living; and (F) increasing access to assistive and universally designed technologies.

Dated: March 29, 2016.

Aaron Bishop,

Commissioner, Administration on Disabilities.

[FR Doc. 2016–07654 Filed 4–1–16; 8:45 am]

BILLING CODE 4154–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2014–E–2325]

Determination of Regulatory Review Period for Purposes of Patent Extension; BRINTELLIX

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) has determined the regulatory review period for BRINTELLIX and is publishing this notice of that determination as required by law. FDA has made the determination because of the submission of an application to the Director of the U.S. Patent and Trademark Office (USPTO), Department of Commerce, for the extension of a patent which claims that human drug product.

DATES: Anyone with knowledge that any of the dates as published (in the **SUPPLEMENTARY INFORMATION** section) are incorrect may submit either electronic or written comments and ask for a redetermination by June 3, 2016. Furthermore, any interested person may petition FDA for a determination regarding whether the applicant for extension acted with due diligence during the regulatory review period by October 3, 2016. See "Petitions" in the **SUPPLEMENTARY INFORMATION** section for more information.

ADDRESSES: You may submit comments as follows:

Electronic Submissions

Submit electronic comments in the following way:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to *http://www.regulations.gov* will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else's Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on *http://www.regulations.gov.*
- If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission and in the manner detailed (see "Written/Paper Submissions" and "Instructions").

Written/Paper Submissions

Submit written/paper submissions as follows:

- *Mail/Hand delivery/Courier (for written/paper submissions):* Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.
- For written/paper comments submitted to the Division of Dockets Management, FDA will post your comment, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in "Instructions."

Instructions: All submissions received must include the Docket No. FDA–2014–E–2325 for "Determination of Regulatory Review Period for Purposes of Patent Extension; BRINTELLIX". Received comments will be placed in the docket and, except for those submitted as "Confidential Submissions," publicly viewable at *http://www.regulations.gov* or at the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

- Confidential Submissions—To submit a comment with confidential information that you do not wish to be made publicly available, submit your comments only as a written/paper submission. You should submit two copies total. One copy will include the information you claim to be confidential with a heading or cover note that states "THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION". The Agency will review this copy, including the claimed confidential information, in its consideration of comments. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on *http://www.regulations.gov.* Submit both copies to the Division of Dockets Management. If you do not wish your name and contact information to be made publicly available, you can provide this information on the cover sheet and not in the body of your comments and you must identify this information as "confidential." Any information marked as "confidential" will not be disclosed except in accordance with 21 CFR 10.20 and other applicable disclosure law. For more information about FDA's posting of comments to public dockets, see 80 FR 56469, September 18, 2015, or access the information at: *http://www.fda.gov/regulatoryinformation/dockets/default.htm.*

Docket: For access to the docket to read background documents or the electronic and written/paper comments received, go to *http://www.regulations.gov* and insert the docket number, found in brackets in the heading of this document, into the "Search" box and follow the prompts and/or go to the Division of Dockets Management, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Beverly Friedman, Office of Regulatory Policy, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, Rm. 6250, Silver Spring, MD 20993, 301–796–3600.

SUPPLEMENTARY INFORMATION:

I. Background

The Drug Price Competition and Patent Term Restoration Act of 1984 (Pub. L. 98–417) and the Generic Animal Drug and Patent Term Restoration Act (Pub. L. 100–670) generally provide that a patent may be extended for a period of up to 5 years so long as the patented item (human drug product, animal drug product, medical device, food additive, or color additive) was subject to regulatory review by FDA before the item was marketed. Under these acts, a product's regulatory review period forms the basis for determining the amount of extension an applicant may receive.

A regulatory review period consists of two periods of time: A testing phase and an approval phase. For human drug products, the testing phase begins when the exemption to permit the clinical investigations of the drug becomes effective and runs until the approval phase begins. The approval phase starts with the initial submission of an application to market the human drug product and continues until FDA grants permission to market the drug product. Although only a portion of a regulatory review period may count toward the actual amount of extension that the Director of USPTO may award (for example, half the testing phase must be subtracted as well as any time that may have occurred before the patent was issued), FDA's determination of the length of a regulatory review period for a human drug product will include all of the testing phase and approval phase as specified in 35 U.S.C. 156(g)(1)(B).

FDA has approved for marketing the human drug product BRINTELLIX (vortioxetine hydrobromide). BRINTELLIX is indicated for treatment of major depressive disorder. Subsequent to this approval, the USPTO received a patent term restoration application for BRINTELLIX (U.S. Patent No. 7,144,884) from H. Lundbeck A/S, and the USPTO requested FDA's assistance in determining this patent's eligibility for patent term restoration. In a letter dated March 19, 2015, FDA advised the USPTO that this human drug product had undergone a regulatory review period and that the approval of BRINTELLIX represented the first permitted commercial marketing or use of the product. Thereafter, the USPTO requested that FDA determine the product's regulatory review period.

II. Determination of Regulatory Review Period

FDA has determined that the applicable regulatory review period for BRINTELLIX is 2,343 days. Of this time, 1,979 days occurred during the testing phase of the regulatory review period, while 364 days occurred during the approval phase. These periods of time were derived from the following dates:

1. *The date an exemption under section 505(i) of the Federal Food, Drug, and Cosmetic Act (the FD&C Act) (21 U.S.C. 355(i)) became effective:* May 4, 2007. FDA has verified the H. Lundbeck A/S claim that May 4, 2007, is the date the investigational new drug application) became effective.
2. *The date the application was initially submitted with respect to the human drug product under section 505(b) of the FD&C Act:* October 2, 2012. FDA has verified the applicant's claim that the new drug application (NDA) for BRINTELLIX (NDA 204447) was initially submitted on October 2, 2012.
3. *The date the application was approved:* September 30, 2013. FDA has verified the applicant's claim that NDA 204447 was approved on September 30, 2013.

This determination of the regulatory review period establishes the maximum potential length of a patent extension. However, the USPTO applies several statutory limitations in its calculations of the actual period for patent extension. In its application for patent extension, this applicant seeks 1,353 days of patent term extension.

III. Petitions

Anyone with knowledge that any of the dates as published are incorrect may submit either electronic or written comments and ask for a redetermination (see **DATES**). Furthermore, any interested person may petition FDA for a determination regarding whether the applicant for extension acted with due diligence during the regulatory review period. To meet its burden, the petition must be timely (see **DATES**) and contain sufficient facts to merit an FDA investigation. (See H. Rept. 857, part 1, 98th Cong., 2d sess., pp. 41–42, 1984.) Petitions should be in the format specified in 21 CFR 10.30.

Submit petitions electronically to *http://www.regulations.gov* at Docket No. FDA–2013–S–0610. Submit written petitions (two copies are required) to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852. Petitions that have not been made publicly available on *http://www.regulations.gov* may be viewed in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

Dated: March 29, 2016.

Leslie Kux,

Associate Commissioner for Policy.

[FR Doc. 2016–07477 Filed 4–1–16; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2016–N–1076]

Determination That PRONESTYL (Procainamide Hydrochloride) Injectable and Other Drug Products Were Not Withdrawn From Sale for Reasons of Safety or Effectiveness

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA or Agency) has determined that the drug products listed in this document were not withdrawn from sale for reasons of safety or effectiveness. This determination means that FDA will not begin procedures to withdraw approval of abbreviated new drug applications (ANDAs) that refer to these drug products, and it will allow FDA to continue to approve ANDAs that refer to the products as long as they meet relevant legal and regulatory requirements.

FOR FURTHER INFORMATION CONTACT: Stacy Kane, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, Rm. 6207, Silver Spring, MD 20993–0002, 301–796–8363, *Stacy.Kane@fda.hhs.gov*.

SUPPLEMENTARY INFORMATION: In 1984, Congress enacted the Drug Price Competition and Patent Term Restoration Act of 1984 (Pub. L. 98–417) (the 1984 amendments), which authorized the approval of duplicate versions of drug products approved under an ANDA procedure. ANDA applicants must, with certain exceptions, show that the drug for which they are seeking approval contains the same active ingredient in the same strength and dosage form as the "listed drug," which is a version of the drug that was previously approved. ANDA applicants do not have to repeat the extensive clinical testing otherwise necessary to gain approval of a new drug application (NDA).

The 1984 amendments include what is now section 505(j)(7) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355(j)(7)), which requires FDA to publish a list of all approved drugs. FDA publishes this list as part of the "Approved Drug Products With Therapeutic Equivalence Evaluations," which is generally known as the "Orange Book." Under FDA regulations, a drug is removed from the list if the Agency withdraws or suspends approval of the drug's NDA or ANDA for reasons of safety or effectiveness, or if FDA determines that the listed drug was withdrawn from sale for reasons of safety or effectiveness (21 CFR 314.162).

Under § 314.161(a) (21 CFR 314.161(a)), the Agency must determine whether a listed drug was withdrawn from sale for reasons of safety or effectiveness: (1) Before an ANDA that refers to that listed drug may be approved, (2) whenever a listed drug is voluntarily withdrawn from sale and ANDAs that refer to the listed drug have been approved, and (3) when a person petitions for such a determination under 21 CFR 10.25(a) and 10.30. Section 314.161(d) provides that if FDA determines that a listed drug was withdrawn from sale for safety or effectiveness reasons, the Agency will initiate proceedings that could result in the withdrawal of approval of the ANDAs that refer to the listed drug.

FDA has become aware that the drug products listed in the table in this document are no longer being marketed.

Application No.	Drug name	Active ingredient(s)	Strength(s)	Dosage form/route	Applicant
NDA 007335	PRONESTYL	Procainamide Hydrochloride.	100 milligrams (mg)/milliliter (mL); 500 mg/mL.	Injectable; Injection	Apothecon Pharmaceuticals Pvt. Ltd.
			250 mg; 375 mg; 500 mg	Capsule; Oral.	
NDA 016020	SYMMETREL	Amantadine Hydrochloride.	100 mg	Capsule; Oral	Endo Pharmaceuticals Inc.
NDA 018127	OVCON–35	Ethinyl Estradiol; Norethindrone.	0.035 mg; 0.4 mg	Tablet; Oral-21	Warner Chilcott LLC.
NDA 018309	TOPICORT LP	Desoximetasone	0.05%	Cream; Topical	Taro Pharmaceutical Industries Ltd.
NDA 021431	CAMPRAL	Acamprosate Calcium	333 mg	Delayed-release Tablets; Oral.	Forest Laboratories, Inc.
NDA 050195	OXACILLIN SODIUM	Oxacillin Sodium	Equivalent to (EQ) 250 mg base/vial; EQ 500 mg base/vial; EQ 1 gram (g) base/vial; EQ 2 g base/vial; EQ 4 g base/vial.	Injectable; Injection	Apothecon Pharmaceuticals Pvt. Ltd.
ANDA 061334	BACTOCILL	Oxacillin Sodium	EQ 500 mg base/vial; EQ 1 g base/vial; EQ 2 g base/vial; EQ 4 g base/vial; EQ 10 g base/vial.	Injectable; Injection	GlaxoSmithKline
ANDA 075730	THIOTEPA	Thiotepa	15 mg/vial; 30 mg/vial	Injectable; Injection	Teva Parenteral
ANDA 077612	SULFAMETHOXAZOLE AND TRIMETHOPRIM.	Sulfamethoxazole; Trimethoprim.	200 mg/5 mL; 40 mg/5 mL	Suspension; Oral	ANI Pharmaceuticals, Inc.

FDA has reviewed its records and, under § 314.161, has determined that the drug products listed in this document were not withdrawn from sale for reasons of safety or effectiveness. Accordingly, the Agency will continue to list the drug products listed in this document in the "Discontinued Drug Product List" section of the Orange Book. The "Discontinued Drug Product List" identifies, among other items, drug products that have been discontinued from marketing for reasons other than safety or effectiveness.

Approved ANDAs that refer to the NDAs and ANDAs listed in this document are unaffected by the discontinued marketing of the products subject to those NDAs and ANDAs. Additional ANDAs that refer to these products may also be approved by the Agency if they comply with relevant legal and regulatory requirements. If FDA determines that labeling for these drug products should be revised to meet current standards, the Agency will advise ANDA applicants to submit such labeling.

Dated: *March 29, 2016.*

Leslie Kux,

Associate Commissioner for Policy.

[FR Doc. 2016–07610 Filed 4–1–16; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2016–D–1025]

Emergency Use Authorization of Medical Products and Related Authorities; Draft Guidance for Industry and Public Health Stakeholders; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of availability.

SUMMARY: The Food and Drug Administration (FDA or Agency) is announcing the availability of a draft guidance for industry and public health stakeholders entitled "Emergency Use Authorization of Medical Products and Related Authorities." The purpose of this draft guidance is to explain FDA's current thinking about policies on the authorization of the emergency use of certain medical products under certain sections of the Federal Food, Drug, and Cosmetic Act (the FD&C Act) as amended or added by the Pandemic and All-Hazards Preparedness Reauthorization Act of 2013 (PAHPRA). The provisions in PAHPRA include key legal authorities to sustain and strengthen national preparedness for public health, military, and domestic emergencies involving chemical, biological, radiological, and nuclear (CBRN) agents, including emerging infectious disease threats. This guidance, when finalized, will replace the current guidance "Emergency Use Authorization of Medical Products" (July 2007) and "Emergency Use Authorization Questions and Answers" (April 2009).

DATES: Although you can comment on any guidance at any time (see 21 CFR 10.115(g)(5)), to ensure that the Agency considers your comment on this draft guidance before it begins work on the final version of the guidance, submit either electronic or written comments on the draft guidance by June 3, 2016. Submit either electronic or written comments on the collection of information by June 3, 2016.

ADDRESSES: You may submit comments as follows:

Electronic Submissions

Submit electronic comments in the following way:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to *http://www.regulations.gov* will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else's Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on *http://www.regulations.gov.*
- If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission and in the manner detailed (see "Written/Paper Submissions" and "Instructions").

Written/Paper Submissions

Submit written/paper submissions as follows:

- *Mail/Hand delivery/Courier (for written/paper submissions):* Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.
- For written/paper comments submitted to the Division of Dockets Management, FDA will post your comment, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in "Instructions."

Instructions: All submissions received must include the Docket No. FDA–2016–D–1025 for "Emergency Use Authorization of Medical Products and Related Authorities; Draft Guidance for Industry and Public Health Stakeholders." Received comments will be placed in the docket and, except for those submitted as "Confidential Submissions," publicly viewable at *http://www.regulations.gov* or at the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

- *Confidential Submissions*—To submit a comment with confidential information that you do not wish to be made publicly available, submit your comments only as a written/paper submission. You should submit two copies total. One copy will include the information you claim to be confidential with a heading or cover note that states "THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION." The Agency will review this copy, including the claimed confidential information, in its consideration of comments. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on *http://www.regulations.gov.* Submit both copies to the Division of Dockets Management. If you do not wish your name and contact information to be made publicly available, you can provide this information on the cover sheet and not in the body of your comments and you must identify this information as "confidential." Any information marked as "confidential" will not be disclosed except in accordance with 21 CFR 10.20 and other applicable disclosure law. For more information about FDA's posting of comments to public dockets, see 80 FR 56469, September 18, 2015, or access the information at: *http://www.fda.gov/regulatoryinformation/dockets/default.htm.*

Docket: For access to the docket to read background documents or the electronic and written/paper comments received, go to *http://www.regulations.gov* and insert the docket number, found in brackets in the heading of this document, into the "Search" box and follow the prompts and/or go to the Division of Dockets Management, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

Submit written requests for single copies of the draft guidance to Office of Counterterrorism and Emerging Threats, Office of the Commissioner, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 1, Rm. 4343, Silver Spring, MD 20993–0002, 301–796–8510. Send one self-addressed adhesive label to assist that office in processing your requests. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the draft guidance document.

FOR FURTHER INFORMATION CONTACT: *With regard to the draft guidance:* Carol Drew, Office of Counterterrorism and Emerging Threats, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 1, Rm. 4320, Silver Spring, MD 20993–0002, 301–796–8510 (this is not a toll free number).

With regard to the proposed collection of information: FDA PRA Staff, Office of Operations, Food and Drug Administration, 8455 Colesville Rd., COLE–141526, Silver Spring, MD 20993–0002, *PRAStaff@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

FDA is announcing the availability of a draft guidance for industry and public health stakeholders entitled "Emergency Use Authorization of Medical Products and Related Authorities." This draft guidance explains FDA's policies applicable to the authorization of the emergency use of certain medical products under sections 564, 564A, and 564B of the FD&C Act[1] (21 U.S.C. 360bbb–3, 360bbb–3a, and 360bbb–3b) as amended or added by PAHPRA (Pub. L. 113–5). The provisions in PAHPRA include key legal authorities to sustain and strengthen national preparedness for public health, military, and domestic emergencies involving CBRN agents, including emerging infectious disease threats such as pandemic influenza. PAHPRA clarifies and enhances FDA's authority to support emergency preparedness and response, and fosters the development and availability of medical products for use in these emergencies. These medical products, also referred to as "medical countermeasures" (MCMs), include drugs, biological products (*e.g.*, vaccines, blood products, and biological therapeutics), and devices (*e.g.*, in vitro diagnostics and personal protective equipment).

This document is intended to inform industry, government agencies, public health and emergency response stakeholders, and FDA staff of FDA's general recommendations and procedures for:

- Issuance of emergency use authorizations (EUAs) under section 564;
- Implementation of the emergency use authorities set forth in section 564A; and
- Reliance on the governmental pre-positioning authority set forth in section 564B.

Section 564, as amended by PAHPRA, permits the Commissioner to authorize the emergency use of an unapproved medical product or an unapproved use of an approved medical product for certain emergency circumstances after the Department of Health and Human Services Secretary has made a declaration of an emergency or threat justifying emergency use. The Commissioner may issue an EUA to allow an MCM to be used in an emergency to diagnose, treat, or prevent serious or life-threatening diseases or conditions caused by a CBRN agent when available data meet specified criteria to support such uses and there are no adequate, approved, and available alternatives.

Section 564A, as added by PAHPRA, establishes streamlined mechanisms to facilitate preparedness and response activities involving certain FDA-approved MCMs without FDA issuing EUAs, which can be a resource-intensive process. These authorities, which apply only to eligible FDA-approved medical products intended for use during a CBRN emergency, include provisions that:

- Empower FDA to extend the expiration date of an eligible FDA-approved MCM stockpiled for use in a CBRN emergency and establish appropriate conditions relating to such extensions, such as appropriate storage, sampling, and labeling;
- Permit FDA to waive otherwise-applicable current good manufacturing practice requirements (*e.g.*, storage or handling) to accommodate emergency response needs;
- Allow emergency dispensing of MCMs during an actual CBRN emergency event without requiring an individual prescription for each recipient of the MCM or all of the information otherwise required, or by responders who may not otherwise be licensed to dispense if permitted by State law in the State where such dispensing occurs, or if in accordance with an order issued by FDA; and
- Permit the Centers for Disease Control and Prevention to create and issue "emergency use instructions" concerning the FDA-approved conditions of use for eligible products.

These authorities, and the definition of eligible products to which they apply, are discussed in the draft guidance.

To enable stakeholders to prepare for potential rapid deployment of MCMs during an actual CBRN emergency, section 564B (also added by PAHPRA) permits Federal, State, and local governments to pre-position (*e.g.*, stockpile, forward-deploy) MCMs in anticipation of FDA approval or clearance, authorization of an investigational use, or the issuance of an EUA. This authority is also discussed in the draft guidance.

The provisions of this guidance, when finalized, will replace the current guidance "Emergency Use Authorization of Medical Products" (July 2007) and "Emergency Use Authorization Questions and Answers" (April 2009).

II. Significance of Guidance

This draft guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). The draft guidance, when finalized, will represent the current thinking of FDA on emergency use authorization of medical products and related authorities. It does not establish any rights for any person and is not binding on FDA or the public. You can use an alternative approach if it satisfies the requirements of the applicable statutes and regulations.

III. Paperwork Reduction Act of 1995

Under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520) (the PRA), Federal Agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. "Collection of information" is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes Agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires Federal Agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information before submitting the collection to OMB for approval. To comply with this requirement, FDA is publishing notice of the proposed collection of information set forth in this document.

With respect to the following collection of information, FDA invites comments on these topics: (1) Whether the proposed collection of information is necessary for the proper performance of FDA's functions, including whether the information will have practical utility; (2) the accuracy of FDA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

Reporting and Recordkeeping for Emergency Use Authorization of Medical Products and Related Authorities—OMB Control Number 0910–0595

This guidance explains FDA's policies applicable to the authorization of the emergency use of certain medical products under sections 564, 564A, and 564B of the FD&C Act as amended or added by PAHPRA. FDA has previously submitted, and OMB has approved under OMB control number 0910–0595, reporting and recordkeeping burden estimates for the EUA provisions of this guidance imposed by section 564 of the FD&C Act. This guidance incorporates provisions of the current guidance linked to OMB control number 0910–0595, "Emergency Use Authorization of Medical Products" (July 2007).

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[1] Section 564 was first added to the FD&C Act by the Project BioShield Act of 2004 (Pub. L. 108–276). Hereafter in this document, statutory references (*e.g.*, "section __") are to the FD&C Act, except where otherwise indicated.

Therefore, we are including in this notice the reporting and recordkeeping burden estimates for the EUA provisions included in the prior guidance as imposed by section 564 of the FD&C Act. In addition, sections 564A and 564B of the FD&C Act, as added by PAHPRA, establish streamlined mechanisms to facilitate preparedness and response activities involving certain FDA-approved MCMs without requiring FDA to issue an EUA. These new FDA authorities include provisions that allow FDA to extend the expiration date of an eligible FDA-approved MCM stockpiled for use in a CBRN emergency. The expiration date extension authority in section 564A applies to any eligible, approved MCM, including eligible MCMs tested through the Federal Shelf-Life Extension Program (SLEP) and State and local public health authorities who maintain their own stockpiles of MCMs.

At this time FDA is not proposing or recommending any changes to the Federal SLEP or procedures for expiration date extensions for products tested by FDA through SLEP. Federal participants in SLEP will continue to submit requests to extend the expiration date of eligible MCMs using established processes.

For drug products not tested within the SLEP program, this guidance recommends that stakeholders consult with the relevant review Center regarding extending the useful shelf-life of a particular product. Stakeholders may need to submit a request for expiry date extensions for stockpiled medical products. Because any such request would be for an approved product, the burden on manufacturers making any such request would be covered by previously approved collections of information, including OMB control number 0910–0139 through May 31, 2018, and OMB control number 0910–0073 through February 28, 2017. FDA anticipates, however, that some requests for expiration date extensions may come from public health authorities maintaining non-Federal stockpiles of MCMs for emergency uses. Therefore, FDA is calculating reporting burden for State and local public health authorities who may need to submit such requests. FDA is not calculating any additional recordkeeping burden for these non-Federal public health authorities because currently these stakeholders maintain records for the MCMs they stockpile, which would include records of any expiration date requests or extensions.

This draft guidance refers to previously approved collections of information. These collections of information are subject to review by the OMB under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). These collections have been approved as follows: Adverse experience reporting for biological products is approved under OMB control number 0910–0308 through February 28, 2018; adverse drug experience reporting is approved under OMB control number 0910–0230 through December 31, 2018; adverse device experience reporting is approved under OMB control number 0910–0471 through May 31, 2017; investigational new drug application regulations are approved under OMB control number 0910–0014 through February 28, 2019; investigational device exemption reporting is approved under OMB control number 0910–0078 through March 31, 2016; current good manufacturing practices for finished pharmaceuticals are approved under OMB control number 0910–0139 through May 31, 2018; quality system regulations for finished devices are approved under OMB control number 0910–0073 through February 28, 2017; risk evaluation and mitigation strategy requirements are approved under OMB control number 0910–0001 for drug products through December 31, 2017, for biological products under OMB control number 0910–0338 through January 31, 2017, and for devices under OMB control numbers 0910–0078 through March 31, 2016 and 0910–0471 through May 31, 2017.

FDA estimates the burden of this collection of information as follows:

TABLE 1—ESTIMATED ANNUAL REPORTING BURDEN [1]

Type of respondent	Number of respondents	Number of responses per respondent	Total annual responses	Average burden per response	Total hours
Manufacturer, Request to Issue an EUA or a Substantive Amendment to an Existing EUA	6	3	18	45	810
Manufacturer, Request for FDA Review of a Pre-EUA Package or an Amendment Thereto	13	6	78	34	2,652
Manufacturer of an Unapproved EUA Product; Conditions of Authorization	5	2	10	2	20
Public Health Authority; Unapproved EUA Product; Conditions of Authorization	30	3	90	2	180
Public Health Authority; Request for Expiration Date Extension	7	1	7	2	14
Total					3,676

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

TABLE 2—ESTIMATED ANNUAL RECORDKEEPING BURDEN [1]

Type of respondent	Number of recordkeepers	Number of records per recordkeeper	Total annual records	Average burden per recordkeeping	Total hours
Manufacturers; Unapproved EUA Product	5	2	10	25	250
Public Health Authorities; Unapproved EUA Product	30	3	90	3	270
Total					520

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

IV. Electronic Access

Persons with access to the Internet may obtain the draft guidance at *http://www.fda.gov/RegulatoryInformation/Guidances/*, *http://www.regulations.gov*, or *http://www.fda.gov/medicalcountermeasures*.

Dated: March 29, 2016.

Leslie Kux,

Associate Commissioner for Policy.

[FR Doc. 2016–07478 Filed 4–1–16; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2016–D–0643]

Labeling for Biosimilar Products; Draft Guidance for Industry; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of availability.

SUMMARY: The Food and Drug Administration (FDA or Agency) is announcing the availability of a draft guidance for industry entitled "Labeling for Biosimilar Products." This draft guidance is intended to assist applicants in developing draft prescription drug labeling for proposed biosimilar products. The recommendations for prescription drug labeling in this guidance pertain only to the prescribing information (commonly referred to as the package insert). This draft guidance provides an overview of FDA's recommendations for labeling for biosimilar products licensed under the Public Health Service Act (PHS Act).

DATES: Although you can comment on any guidance at any time (see 21 CFR 10.115(g)(5)), to ensure that the Agency considers your comment on this draft guidance before it begins work on the final version of the guidance, submit either electronic or written comments on the draft guidance by June 3, 2016.

ADDRESSES: You may submit comments as follows:

Electronic Submissions

Submit electronic comments in the following way:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to *http://www.regulations.gov* will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else's Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on *http://www.regulations.gov.*
- If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission and in the manner detailed (see "Written/Paper Submissions" and "Instructions").

Written/Paper Submissions

Submit written/paper submissions as follows:

- *Mail/Hand delivery/Courier (for written/paper submissions):* Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.
- For written/paper comments submitted to the Division of Dockets Management, FDA will post your comment, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in "Instructions."

Instructions: All submissions received must include the Docket No. FDA–2016–D–0643 for "Labeling for Biosimilar Products; Draft Guidance for Industry; Availability." Received comments will be placed in the docket and, except for those submitted as "Confidential Submissions," publicly viewable at *http://www.regulations.gov* or at the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

- *Confidential Submissions*—To submit a comment with confidential information that you do not wish to be made publicly available, submit your comments only as a written/paper submission. You should submit two copies total. One copy will include the information you claim to be confidential with a heading or cover note that states "THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION." The Agency will review this copy, including the claimed confidential information, in its consideration of comments. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on *http://www.regulations.gov.* Submit both copies to the Division of Dockets Management. If you do not wish your name and contact information to be made publicly available, you can provide this information on the cover sheet and not in the body of your comments and you must identify this information as "confidential." Any information marked as "confidential" will not be disclosed except in accordance with 21 CFR 10.20 and other applicable disclosure law. For more information about FDA's posting of comments to public dockets, see 80 FR 56469, September 18, 2015, or access the information at: *http://www.fda.gov/regulatoryinformation/dockets/default.htm.*

Docket: For access to the docket to read background documents or the electronic and written/paper comments received, go to *http://www.regulations.gov* and insert the docket number, found in brackets in the heading of this document, into the "Search" box and follow the prompts and/or go to the Division of Dockets Management, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

Submit written requests for single copies of the draft guidance to the Division of Drug Information, Center for Drug Evaluation and Research, Food and Drug Administration, 10001 New Hampshire Ave., Hillandale Building, 4th Floor, Silver Spring, MD 20993–0002, or the Office of Communication, Outreach and Development, Center for Biologics Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 71, Rm. 3128, Silver Spring, MD 20993–0002. Send one self-addressed adhesive label to assist that office in processing your requests. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the draft guidance document.

FOR FURTHER INFORMATION CONTACT: Sandra Benton, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, Rm. 6340, Silver Spring, MD 20993, 301–796–1042, or Stephen Ripley, Center for Biologics Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 71, Rm. 7301, Silver Spring, MD 20993–0002, 240–402–7911.

SUPPLEMENTARY INFORMATION:

I. Background

FDA is announcing the availability of a draft guidance for industry entitled "Labeling for Biosimilar Products." The Biologics Price Competition and Innovation Act of 2009 (BCPI Act), enacted as part of the Patient Protection and Affordable Care Act (Affordable Care Act) (Pub. L. 111–148) on March 23, 2010, created an abbreviated licensure pathway for biological products demonstrated to be biosimilar to or interchangeable with a reference product. Section 351(k) of the PHS Act (42 U.S.C. 262(k)), added by the BPCI Act, sets forth the requirements for an application for a proposed biosimilar product and an application or supplement for a proposed interchangeable product. Under section 351(k) of the PHS Act, a proposed biological product that is demonstrated to be biosimilar to a reference product can rely on certain existing scientific knowledge about the safety, purity, and potency of the reference product to support licensure, and this is reflected in the approach to biosimilar product labeling.

In this draft guidance, FDA outlines its recommendations for biosimilar product labeling. A demonstration of biosimilarity means, among other things, that FDA has determined that there are no clinically meaningful differences between the proposed product and the reference product in terms of safety, purity and potency. Accordingly, biosimilar applicants should incorporate relevant data and information from the reference product labeling, with appropriate product-specific modifications as described in the draft guidance.

We invite comment on the draft guidance, including whether patient labeling (*e.g.*, Patient Information, Medication Guide, and Instructions for Use) should include a biosimilarity statement similar to the statement described in section IV.C.1 of the draft guidance.

This draft guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). The draft guidance, when finalized, will represent the current thinking of FDA on labeling for biosimilar products. It does not establish any rights for any person and is not binding on FDA or the public. You can use an alternative approach if it satisfies the requirements of the applicable statutes and regulations.

II. The Paperwork Reduction Act of 1995

This draft guidance refers to previously approved collections of information found in FDA regulations. These collections of information are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–3520). The collections of information under 21 CFR part 601 for the submission of a biologics license application under section 351(k) of the PHS Act have been approved under OMB control number 0910–0719; the collections of information under 21 CFR 201.57 for the submission of labeling have been approved under OMB control number 0910–0572; the collections of information under 21 CFR part 600 for the submission of adverse experience reporting for licensed biological products and general records have been approved under OMB control number 0910–0308; and the collections of information under 21 CFR part 600 for the submission of MedWatch reporting forms (FDA Form 3500 and FDA Form 3500A) have been approved under OMB control number 0910–0291.

III. Electronic Access

Persons with access to the Internet may obtain the draft guidance at *http://www.fda.gov/Drugs/GuidanceComplianceRegulatoryInformation/Guidances/default.htm*, *http://www.fda.gov/BiologicsBloodVaccines/GuidanceComplianceRegulatoryInformation/Guidances/default.htm*, or *http://www.regulations.gov*.

Dated: March 29, 2016.

Leslie Kux,

Associate Commissioner for Policy.

[FR Doc. 2016–07611 Filed 4–1–16; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2016–D–0938 (formerly FDA–2003–D–0034 and 2003D–0061)]

Comparability Protocols—Chemistry, Manufacturing, and Controls Information for New Animal Drugs; Guidance for Industry; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of availability.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a final guidance for industry (#156) entitled "Comparability Protocols—Chemistry, Manufacturing, and Controls Information for New Animal Drugs." This document provides recommendations to applicants on preparing and using comparability protocols for postapproval changes in chemistry, manufacturing, and controls (CMC) information. It is intended to provide recommendations to industry regarding comparability protocols that would be submitted in new animal drug applications (NADAs), abbreviated new animal drug applications (ANADAs), or supplements to these applications. This guidance also applies to comparability protocols submitted in investigational new animal drug (INAD), generic investigational new animal drug (JINAD), and veterinary master file (VMF) submissions that are referenced in applications. FDA is providing this guidance in response to requests from those interested in using comparability protocols.

DATES: Submit either electronic or written comments on Agency guidances at any time.

ADDRESSES: You may submit comments as follows:

Electronic Submissions

Submit electronic comments in the following way:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to *http://www.regulations.gov* will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else's Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on *http://www.regulations.gov.*
- If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission and in the manner detailed (see "Written/Paper Submissions" and "Instructions").

Written/Paper Submissions

Submit written/paper submissions as follows:

- *Mail/Hand delivery/Courier (for written/paper submissions):* Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.
- For written/paper comments submitted to the Division of Dockets Management, FDA will post your comment, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in "Instructions."

Instructions: All submissions received must include the Docket No. FDA–2016–D–0938 for "Comparability

Protocols—Chemistry, Manufacturing, and Controls Information for New Animal Drugs." Received comments will be placed in the docket and, except for those submitted as "Confidential Submissions," publicly viewable at *http://www.regulations.gov* or at the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

- *Confidential Submissions*—To submit a comment with confidential information that you do not wish to be made publicly available, submit your comments only as a written/paper submission. You should submit two copies total. One copy will include the information you claim to be confidential with a heading or cover note that states "THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION." The Agency will review this copy, including the claimed confidential information, in its consideration of comments. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on *http://www.regulations.gov.* Submit both copies to the Division of Dockets Management. If you do not wish your name and contact information to be made publicly available, you can provide this information on the cover sheet and not in the body of your comments and you must identify this information as "confidential." Any information marked as "confidential" will not be disclosed except in accordance with 21 CFR 10.20 and other applicable disclosure law. For more information about FDA's posting of comments to public dockets, see 80 FR 56469, September 18, 2015, or access the information at: *http://www.fda.gov/regulatoryinformation/dockets/default.htm.*

Docket: For access to the docket to read background documents or the electronic and written/paper comments received, go to *http://www.regulations.gov* and insert the docket number, found in brackets in the heading of this document, into the "Search" box and follow the prompts and/or go to the Division of Dockets Management, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

Submit written requests for single copies of the guidance to the Policy and Regulations Staff (HFV–6), Center for Veterinary Medicine, Food and Drug Administration, 7519 Standish Pl., Rockville, MD 20855. Send one self-addressed adhesive label to assist that office in processing your requests. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the guidance document.

FOR FURTHER INFORMATION CONTACT: Dennis Bensley, Center for Veterinary Medicine (HFV–140), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 240–402–0696, *dennis.bensley@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

In the **Federal Register** of February 25, 2003 (68 FR 8772), FDA published the notice of availability for a draft guidance for industry entitled "Comparability Protocols—Chemistry, Manufacturing, and Controls Information," giving interested persons until June 25, 2003, to comment on the draft guidance and those comments were considered as the guidance was finalized. A summary of changes include describing comparability protocols submitted in CMC (J)INAD technical data submissions or (J)INAD protocols without substantial data. In accordance with the performance goals and procedures for the ADUFA and AGDUFA reauthorizations for fiscal years 2014 through 2018, comparability protocols may be submitted as comparability protocols without substantial data in a (J)INAD file. In addition, editorial changes were made to improve clarity. The guidance announced in this notice finalizes the draft guidance dated February 2003 only as it applies to the preparation and submission to the Center for Veterinary Medicine of comparability protocols for postapproval changes in CMC information for new animal drugs.

II. Significance of Guidance

This level 1 guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). This guidance represents the current thinking of FDA on Comparability Protocols—Chemistry, Manufacturing, and Controls Information for New Animal Drugs. It does not establish any rights for any person and is not binding on FDA or the public. You can use an alternative approach if it satisfies the requirements of the applicable statutes and regulations.

III. Paperwork Reduction Act of 1995

This guidance refers to previously approved collections of information found in FDA regulations. These collections of information are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). The collections of information in 21 CFR part 514 have been approved under OMB control number 0910–0032; the collections of information in section 512(n)(1) of the FD&C Act (21 U.S.C. 360b) have been approved under OMB control number 0910–0669.

IV. Electronic Access

Persons with access to the Internet may obtain the guidance at either *http://www.fda.gov/AnimalVeterinary/GuidanceComplianceEnforcement/GuidanceforIndustry/default.htm* or *http://www.regulations.gov.*

Dated: March 29, 2016.

Leslie Kux,

Associate Commissioner for Policy.

[FR Doc. 2016–07573 Filed 4–1–16; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2004–N–0451]

Food and Drug Administration Modernization Act of 1997: Modifications to the List of Recognized Standards, Recognition List Number: 041

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA or Agency) is announcing a publication containing modifications the Agency is making to the list of standards FDA recognizes for use in premarket reviews (FDA Recognized Consensus Standards). This publication, entitled "Modifications to the List of Recognized Standards, Recognition List Number: 041" (Recognition List Number: 041), will assist manufacturers who elect to declare conformity with consensus standards to meet certain requirements for medical devices.

DATES: Submit electronic or written comments concerning this document at any time. These modifications to the list of recognized standards are effective April 4, 2016.

ADDRESSES: You may submit comments as follows:

Electronic Submissions

Submit electronic comments in the following way:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to *http://www.regulations.gov* will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else's Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on *http://www.regulations.gov.*

- If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission and in the manner detailed (see "Written/Paper Submissions" and "Instructions").

Written/Paper Submissions

Submit written/paper submissions as follows:

- *Mail/Hand delivery/Courier (for written/paper submissions):* Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.
- For written/paper comments submitted to the Division of Dockets Management, FDA will post your comment, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in "Instructions."

Instructions: All submissions received must include the Docket No. FDA–2004–N–0451 for "Food and Drug Administration Modernization Act of 1997: Modifications to the List of Recognized Standards, Recognition List Number: 041." Received comments will be placed in the docket and, except for those submitted as "Confidential Submissions," publicly viewable at *http://www.regulations.gov* or at the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday. FDA will consider any comments received in determining whether to amend the current listing of modifications to the list of recognized standards, Recognition List Number: 041.

- Confidential Submissions—To submit a comment with confidential information that you do not wish to be made publicly available, submit your comments only as a written/paper submission. You should submit two copies total. One copy will include the information you claim to be confidential with a heading or cover note that states "THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION." The Agency will review this copy, including the claimed confidential information, in its consideration of comments. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on *http://www.regulations.gov.* Submit both copies to the Division of Dockets Management. If you do not wish your name and contact information to be made publicly available, you can provide this information on the cover sheet and not in the body of your comments and you must identify this information as "confidential." Any information marked as "confidential" will not be disclosed except in accordance with 21 CFR 10.20 and other applicable disclosure law. For more information about FDA's posting of comments to public dockets, see 80 FR 56469, September 18, 2015, or access the information at: *http://www.fda.gov/regulatoryinformation/dockets/default.htm.*

Docket: For access to the docket to read background documents or the electronic and written/paper comments received, go to *http://www.regulations.gov* and insert the docket number, found in brackets in the heading of this document, into the "Search" box and follow the prompts and/or go to the Division of Dockets Management, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

An electronic copy of Recognition List Number: 041 is available on the Internet at *http://www.fda.gov/MedicalDevices/DeviceRegulationandGuidance/Standards/ucm123792.htm.* See section VI of this document for electronic access to the searchable database for the current list of FDA recognized consensus standards, including Recognition List Number: 041 modifications and other standards related information. Submit written requests for a single hard copy of the document entitled "Modifications to the List of Recognized Standards, Recognition List Number: 041" to the Division of Industry and Consumer Education, Center for Devices and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 66, Rm. 4613, Silver Spring, MD 20993–0002. Send one self-addressed adhesive label to assist that office in processing your request, or fax your request to 301–847–8149.

FOR FURTHER INFORMATION CONTACT: Scott A. Colburn, Center for Devices and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 66, Rm. 3632, Silver Spring, MD 20993, 301–796–6287, *standards@cdrh.fda.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

Section 204 of the Food and Drug Administration Modernization Act of 1997 (FDAMA) (Pub. L. 105–115) amended section 514 of the Federal Food, Drug, and Cosmetic Act (the FD&C Act) (21 U.S.C. 360d). Amended section 514 allows FDA to recognize consensus standards developed by international and national organizations for use in satisfying portions of device premarket review submissions or other requirements.

In a notice published in the **Federal Register** of February 25, 1998 (63 FR 9561), FDA announced the availability of a guidance entitled "Recognition and Use of Consensus Standards." The notice described how FDA would implement its standards recognition program and provided the initial list of recognized standards.

Modifications to the initial list of recognized standards, as published in the **Federal Register**, can be accessed at *http://www.fda.gov/MedicalDevices/DeviceRegulationandGuidance/Standards/ucm123792.htm.*

These notices describe the addition, withdrawal, and revision of certain standards recognized by FDA. The Agency maintains hypertext markup language (HTML) and portable document format (PDF) versions of the list of FDA Recognized Consensus Standards. Both versions are publicly accessible at the Agency's Internet site. See section VI of this document for electronic access information. Interested persons should review the supplementary information sheet for the standard to understand fully the extent to which FDA recognizes the standard.

II. Modifications to the List of Recognized Standards, Recognition List Number: 041

FDA is announcing the addition, withdrawal, correction, and revision of certain consensus standards the Agency will recognize for use in premarket submissions and other requirements for devices. FDA will incorporate these modifications in the list of FDA Recognized Consensus Standards in the Agency's searchable database. FDA will use the term "Recognition List Number: 041" to identify these current modifications.

In table 1, FDA describes the following modifications: (1) The withdrawal of standards and their replacement by others, if applicable; (2) the correction of errors made by FDA in listing previously recognized standards; and (3) the changes to the supplementary information sheets of recognized standards that describe revisions to the applicability of the standards.

In section III, FDA lists modifications the Agency is making that involve the initial addition of standards not previously recognized by FDA.

TABLE 1—MODIFICATIONS TO THE LIST OF RECOGNIZED STANDARDS

Old recognition No.	Replacement recognition No.	Title of standard[1]	Change
		A. Anesthesia	
1–92	1–106	ISO 17510 First Edition 2015–08–01 Medical Devices—Sleep Apnoea Breathing Therapy—Masks and Application Accessories.	Withdrawn and replaced with newer version.
1–93		ISO 5361 Second Edition 2012–10–01 Anaesthetic and Respiratory Equipment—Tracheal Tubes and Connectors.	Extent of recognition.
		B. Biocompatibility	
2–180		ANSI/AAMI/ISO 10993–16:2010/(R) 2014 Biological evaluation of medical devices—Part 16: Toxicokinetic study design for degradation products and leachables.	Reaffirmation.
		C. Cardiovascular	
3–119		ISO 5841–3 Third Edition 2013–04–15 Implants for surgery—Cardiac pacemakers—Part 3: Low-profile connectors [is-i] for implantable pacemakers.	Withdrawn—Duplicate recognition—See 3–125.
3–138		ASTM F2942–13 Standard Guide For the In Vitro Axial, Bending, and Rotational Durability Test of Vascular Stents.	Extent of recognition.
		D. Dental/Ear, Nose, and Throat (ENT)	
4–121	4–221	ISO 7494–2 Second Edition 2015–04–01 Dentistry—Dental units—Part 2: Air, water, suction and wastewater system.	Withdrawn and replaced with newer version.
4–132	4–222	ISO 6874 Third Edition 2015–09–01 Dentistry—Polymer-based pit and fissure sealants.	Withdrawn and replaced with newer version.
4–178	4–223	ISO 6872 Fourth Edition 2015–06–01 Dentistry—Ceramic materials	Withdrawn and replaced with newer version.
4–190		ANSI/ASA S3.35–2010 (R2015) Method of Measurement of Performance Characteristics of Hearing Aids Under Simulated Real-Ear Working Conditions.	Reaffirmation.
4–194		ANSI/ADA Specification No. 78: 2006, Dental Obturating Cones (Modified adoption of ISO 6877–1:1995, Dental Obturating Points).	Extent of recognition.
4–202		ANSI/ADA Specification No. 58 Root Canal Files, Type H (Hedstrom)	Extent of recognition.
4–209	4–224	ISO 24234 Second Edition 2015–05–01 Dentistry—Dental amalgam	Withdrawn and replaced with newer version.
4–210	4–225	ISO 4823 Fourth Edition 2015–08–01 Dentistry—Elastomeric impression materials.	Withdrawn and replaced with newer version.
4–213		ISO 7494–1 Second Edition 2011–08–15 Dentistry—Dental units—Part 1: General requirements and test methods.	Extent of recognition.
4–214		ISO 10139–1 Second Edition 2005–02–15 Dentistry—Soft lining materials for removable dentures—Part 1: Materials for short-term use [Including: Technical Corrigendum 1 (2006)].	Extent of recognition.
		E. General I (Quality Systems/Risk Management (QS/RM)	
5–43	5–98	ANSI/ESD S20.20–2014 Protection of Electrical and Electronic Parts, Assemblies, and Equipment (Excluding Electrically Initiated Explosive Devices).	Withdrawn and replaced with newer version.
5–80	5–99	ASTM D4332–14 Standard Practice for Conditioning Containers, Packages, or Packaging Components for Testing.	Withdrawn and replaced with newer version.
		F. General II (Electrical Safety/Electromagnetic Compatibility)(ES/EMC)	
19–7	19–16	ANSI/AAMI HA60601–1–11:2015 (IEC 60601–1–11:2015, MOD) MEDICAL ELECTRICAL EQUIPMENT—Part 1–11: General requirements for basic safety and essential performance—Collateral Standard: Requirements for medical electrical equipment and medical electrical systems used in the home healthcare environment.	Withdrawn and replaced with newer version.
19–7		AAMI/ANSI HA60601–1–11:2011, Medical electrical equipment—Part 1–11: General requirements for basic safety and essential performance—Collateral standard: Requirements for medical electrical equipment and medical electrical equipment and medical electrical systems used in the home healthcare environment (IEC 60601–1–11:2010 MOD).	Transition period.

TABLE 1—MODIFICATIONS TO THE LIST OF RECOGNIZED STANDARDS—Continued

Old recognition No.	Replacement recognition No.	Title of standard [1]	Change
G. General Hospital/General Plastic Surgery (GH/GPS)			
6–169	6–355	ASTM D3772—15 Standard Specification for Industrial Rubber Finger Cots.	Withdrawn and replaced with newer version.
6–243	6–356	ASTM D5712—15 Standard Test Method for Analysis of Aqueous Extractable Protein in Latex, Natural Rubber, and Elastomeric Products Using the Modified Lowry Method.	Withdrawn and replaced with newer version.
H. In Vitro Diagnostics (IVD)			
7–167	7–259	CLSI GP23–A Nongynecologic Cytologic Specimens: Collection And Cytopreparatory Techniques; Approved Guideline.	Withdrawn and replaced with newer version.
7–132	7–260	CLSI MM03–A2 Molecular Diagnostic Methods for Infectious Diseases; Approved Guideline.	Withdrawn and replaced with newer version.
7–229		CLSI M02–A11 Performance Standards for Antimicrobial Disk Susceptibility Tests; Approved Standard—Eleventh Edition.	Withdrawn. See 7–258.
I. Materials			
8–103		ASTM F1807–97 (Reapproved 2014) Standard Practice for Corrosion Fatigue Testing of Metallic Implant Materials.	Reaffirmation.
8–107		ASTM F746–04 (Reapproved 2014) Standard Test Method for Pitting or Crevice Corrosion of Metallic Surgical Implant Materials.	Reaffirmation.
8–114		ASTM F2255–05 (Reapproved 2015) Standard Test Method for Strength Properties of Tissue Adhesives in Lap-Shear by Tension Loading.	Reaffirmation.
8–115		ASTM F2256–05 (Reapproved 2015) Standard Test Method for Strength Properties of Tissue Adhesives in T-Peel by Tension Loading.	Reaffirmation.
8–116		ASTM F2258–05 (Reapproved 2015) Standard Test Method for Strength Properties of Tissue Adhesives in Tension.	Reaffirmation.
8–121		ASTM F2005–05 (Reapproved 2015) Standard Terminology for Nickel-Titanium Shape Memory Alloys.	Reaffirmation.
8–134	8–392	ASTM F2082–15 Standard Test Method for Determination of Transformation Temperature of Nickel-Titanium Shape Memory Alloys by Bend and Free Recovery.	Withdrawn and replaced with newer version.
8–135		ASTM F2392–04 (Reapproved 2015) Standard Test Method for Burst Strength of Surgical Sealants.	Reaffirmation.
8–136		ASTM F2458–05 (Reapproved 2015) Standard Test Method for Wound Closure Strength of Tissue Adhesives and Sealants.	Reaffirmation.
8–167	8–393	ASTM F1350–15 Standard Specification for Wrought 18Chromium-14Nickel-2.5Molybdenum Stainless Steel Surgical Fixation Wire (UNS S31673).	Withdrawn and replaced with newer version.
8–168	8–394	ASTM F1472–14 Standard Specification for Wrought Titanium-6Aluminum-4Vanadium Alloy for Surgical Implant Applications (UNS R56400).	Withdrawn and replaced with newer version.
8–170	8–395	ASTM F961–14 Standard Specification for 35Cobalt-35Nickel-20Chromium-10Molybdenum Alloy Forgings for Surgical Implants (UNS R30035).	Withdrawn and replaced with newer version.
8–177	8–396	ASTM F2129–15 Standard Test Method for Conducting Cyclic Potentiodynamic Polarization Measurements to Determine the Corrosion Susceptibility of Small Implant Devices.	Withdrawn and replaced with newer version.
8–179		ASTM F754–08 (Reapproved 2015) Standard Specification for Implantable Polytetrafluoroethylene (PTFE) Sheet, Tube, and Rod Shapes Fabricated from Granular Molding Powders.	Reaffirmation.
8–184	8–397	ASTM F2516–14 Standard Test Method for Tension Testing of Nickel-Titanium Superelastic Materials.	Withdrawn and replaced with newer version.
8–189	8–398	ASTM F1108–14 Standard Specification for Titanium-6Aluminum-4Vanadium Alloy Castings for Surgical Implants (UNS R56406).	Withdrawn and replaced with newer version.
8–190	8–399	ASTM F90–14 Standard Specification for Wrought Cobalt-20Chromium-15Tungsten-10Nickel Alloy for Surgical Implant Applications (UNS R30605).	Withdrawn and replaced with newer version.
8–192	8–400	ASTM F1854–15 Standard Test Method for Stereological Evaluation of Porous Coatings on Medical Implants.	Withdrawn and replaced with newer version.
8–200		ASTM F2003–02 (Reapproved 2015) Standard Practice for Accelerated Aging of Ultra-High Molecular Weight Polyethylene after Gamma Irradiation in Air.	Reaffirmation.
8–204	8–401	ASTM F2118–14 Standard Test Method for Constant Amplitude of Force Controlled Fatigue Testing of Acrylic Bone Cement Materials.	Withdrawn and replaced with newer version.

TABLE 1—MODIFICATIONS TO THE LIST OF RECOGNIZED STANDARDS—Continued

Old recognition No.	Replacement recognition No.	Title of standard [1]	Change
8–206	8–402	ASTM F688–14 Standard Specification for Wrought Cobalt-35Nickel-20Chromium 10Molybdenum Alloy Plate, Sheet, and Foil for Surgical Implants (UNS R30035).	Withdrawn and replaced with newer version.
8–225		ASTM F2003–02 (Reapproved 2015) Standard Practice for Accelerated Aging of Ultra-High Molecular Weight Polyethylene after Gamma Irradiation in Air.	Withdrawn. See 8–200.
8–363	8–403	ASTM D638–14 Standard Test Method for Tensile Properties of Plastics.	Withdrawn and replaced with newer version.
8–367	8–404	ASTM E647–15 Standard Test Method for Measurement of Fatigue Crack Growth Rates.	Withdrawn and replaced with newer version.
8–369		ASTM F2003–02 (Reapproved 2015) Standard Practice for Accelerated Aging of Ultra-High Molecular Weight Polyethylene after Gamma Irradiation in Air.	Withdrawn. See 8–200.
8–386	8–405	ISO 5832–4 Third Edition 2014–09–15 Implants for surgery—Metallic materials—Part 4: Cobalt-chromium-molybdenum casting alloy.	Withdrawn and replaced with newer version.
8–387	8–406	ISO 5832–11 Second Edition 2014–09–15 Implants for surgery—Metallic materials—Part 11: Wrought titanium 6-aluminium 7-niobium alloy.	Withdrawn and replaced with newer version.
		J. Nanotechnology	
18–1		ASTM E2490–09 (Reapproved 2015) Standard Guide for Measurement of Particle Size Distribution of Nanomaterials in Suspension by Photon Correlation Spectroscopy (PCS).	Reaffirmation.
		K. Obstetrics-Gynecology (OB–GYN)/Gastroenterology	
9–61		IEC 60601–2–18 Edition 3.0 2009–08 Medical Electrical Equipment—Part 2–18: Particular requirements for the basic safety and essential performance of endoscopic equipment.	Withdrawn. Merged with 4–187.
9–83	9–110	ISO 8600–1 Fourth Edition 2015–10–15 Endoscopes—Medical endoscopes and endotherapy devices—Part 1: General requirements.	Withdrawn and replaced with newer version.
9–96		CEN EN 1618:1997 Catheters Other Than Intravascular Catheters—Test Methods for Common Properties.	Duplicate recognition number. See 9–113.
9–102	9–111	ISO 4074 Third Edition 2015–10–15 Natural rubber latex male condoms—Requirements and test methods.	Withdrawn and replaced with newer version.
9–109	9–112	ASTM D3492–15 Standard Specification for Rubber Contraceptives (Male Condoms).	Withdrawn and replaced with newer version.
		L. Ophthalmic	
10–73		ANSI Z80.21–2010 (R2015) Ophthalmics—Instruments—General-Purpose Clinical Visual Acuity Charts.	Reaffirmation.
		M. Orthopedic	
11–207	11–296	ASTM F2193–14 Standard Specifications and Test Methods for Components Used in the Surgical Fixation of the Spinal Skeletal System.	Withdrawn and replaced with newer version.
11–214	11–297	ASTM F382—14 Standard Specification and Test Method for Metallic Bone Plates.	Withdrawn and replaced with newer version.
11–216	11–298	ASTM F1264—14 Standard Specification and Test Methods for Intramedullary Fixation Devices.	Withdrawn and replaced with newer version.
11–220	11–299	ASTM F2068—15 Standard Specification for Femoral Prostheses—Metallic Implants.	Withdrawn and replaced with newer version.
11–227		ASTM F366–10 (Reapproved 2015) Standard Specification for Fixation Pins and Wires.	Reaffirmation.
11–228		ASTM F564–10 (Reapproved 2015) Standard Specification and Test Methods for Metallic Bone Staples.	Reaffirmation.
11–247		ASTM F2789–10 (Reapproved 2015) Standard Guide for Mechanical and Functional Characterization of Nucleus Devices.	Reaffirmation.
11–256		ISO 14243–3 First Edition 2004–09–25 Implants for surgery—Wear of total knee-joint prostheses—Part 3: Loading and displacement parameters for wear-testing machines with displacement control and corresponding environmental conditions for test [Including: Technical Corrigendum 1(2006)].	Withdrawn. See 11–292.
11–262	11–301	ASTM F2091–15 Standard Specification for Acetabular Prostheses	Withdrawn and replaced with newer version.

TABLE 1—MODIFICATIONS TO THE LIST OF RECOGNIZED STANDARDS—Continued

Old recognition No.	Replacement recognition No.	Title of standard[1]	Change
11–278	11–302	ASTM F1717–15 Standard Test Methods for Spinal Implant Constructs in a Vertebrectomy Model.	Withdrawn and replaced with newer version.
		N. Physical Medicine	
16–158	16–195	ISO 7176–1 Third Edition 2014–10–01 Wheelchairs—Part 1: Determination of static stability.	Withdrawn and replaced with newer version.
		O. Radiology	
12–139	....	NEMA UD 2–2004 (R2009) Acoustic output measurement standard for diagnostic ultrasound equipment, Revision 3.	Reaffirmation.
12–187	....	NEMA MS 3–2008 (R2014) Determination of Image Uniformity in Diagnostic Magnetic Resonance Images.	Reaffirmation.
12–188	....	NEMA MS 1–2008 (R2014) Determination of Signal-to-Noise Ratio (SNR) in Diagnostic Magnetic Resonance Imaging.	Reaffirmation.
12–195	....	NEMA MS 6–2008 (R2014) Determination of Signal-to-Noise Ratio and Image Uniformity for Single-Channel, Non-Volume Coils in Diagnostic Magnetic Resonance Imaging (MRI).	Reaffirmation.
12–196	....	NEMA MS 2–2008 (R2014) Determination of Two-Dimensional Geometric Distortion in Diagnostic Magnetic Resonance Images.	Reaffirmation.
12–207	....	IEC 60601–2–33 Ed. 3.0 2010 Medical electrical equipment—Part 2–33: Particular requirements for the basic safety and essential performance of magnetic resonance equipment for medical diagnosis.	Extent of recognition.
12–209	12–293	IEC 60601–2–37 Ed. 2.1 b:2015 Medical electrical equipment—Part 2–37: Particular requirements for the basic safety and essential performance of ultrasonic medical diagnostic and monitoring equipment.	Withdrawn and replaced with newer version.
12–236	12–294	IEC 60601–2–45 Ed. 3.1 b:2015 Medical electrical equipment—Part 2–45: Particular requirements for basic safety and essential performance of mammographic X-ray equipment and mammographic stereotactic devices.	Withdrawn and replaced with newer version.
12–257	12–297	ISO 2919 Third Edition 2012–02–15 Radiation protection—Sealed radioactive sources—General requirements and classification.	Duplicate recognition number. See 12–297.
12–271	12–295	IEC 60601–2–33 Ed. 3.2 b:2015 Medical electrical equipment—Part 2–33: Particular requirements for the basic safety and essential performance of magnetic resonance equipment for medical diagnosis.	Withdrawn and replaced with newer version.
12–274	12–296	IEC 60601–2–54 Ed. 1.1 b:2015 Medical electrical equipment—Part 2–54: Particular requirements for the basic safety and essential performance of X-ray equipment for radiography and radioscopy.	Withdrawn and replaced with newer version.
12–288	....	NEMA MS 9–2008 (R2014) Characterization of Phased Array Coils for Diagnostic Magnetic Resonance Images (MRI).	Reaffirmation.
		P. Software/Informatics	
13–8	13–79	IEC 62304 Edition 1.1 2015–06 Medical device software—Software life cycle processes.	Withdrawn and replaced with newer version.
13–50	13–80	IEEE Std. 11073–20601: 2014 Health informatics—Personal health device communication—Part 20601: Application profile—Optimized Exchange Protocol [including: Corrigendum 1 (2015)].	Withdrawn and replaced with newer version.
13–51	....	IEEE Std. 11073–20601a-2010 Health informatics—Personal health device communication—Part 20601: Application profile—Optimized Exchange Protocol Amendment 1.	Withdrawn. See 13–80.
		Q. Sterility	
14–227	....	ANSI/AAMI/ISO 11737–1:2006 (R)2011 Sterilization of health care products—Microbiological methods—Part 1: Determination of the population of microorganisms on product.	Extent of recognition.
14–261	....	ANSI/AAMI/ISO 17665–1:2006/(R)2013 Sterilization of health care products—Moist heat—Part 1: Requirements for the development, validation, and routine control of a sterilization process for medical devices.	Extent of recognition.
14–277	....	ISO/TS 17665–2 First Edition 2009–01–15 Sterilization of health care products—Moist heat—Part 2: Guidance on the application of ISO 17665–1.	Extent of recognition.
14–287	....	ANSI/AAMI/ISO 11737–2:2009/(R)2014 Sterilization of medical devices—Microbiological methods—Part 2: Tests of sterility performed in the definition, validation, and maintenance of a sterilization process.	Extent of recognition.

TABLE 1—MODIFICATIONS TO THE LIST OF RECOGNIZED STANDARDS—Continued

Old recognition No.	Replacement recognition No.	Title of standard[1]	Change
14–291		ANSI/AAMI/ISO 14937:2009/(R)2013 Sterilization of healthcare products—General requirements for characterization of a sterilizing agent and the development, validation, and routine control of a sterilization process for medical devices.	Extent of recognition.
14–296		ANSI/AAMI/ISO 11138–1:2006/(R)2010 Sterilization of health care products—Biological indicators—Part 1: General requirements.	Extent of recognition.
14–298		ANSI/AAMI/ISO 11137–3:2006/(R)2010 Sterilization of health care products—Radiation—Part 3: Guidance on dosimetric aspects.	Extent of recognition.
14–327		ISO 11737–2 Second Edition 2009–11–15 Sterilization of medical devices—Microbiological methods—Part 2: Tests of sterility performed in the definition, validation, and maintenance of a sterilization process.	Extent of recognition.
14–330		ISO 11137–3 First Edition 2006–04–15 Sterilization of health care products—Radiation—Part 3: Guidance on dosimetric aspects.	Extent of recognition.
14–333		ISO 17665–1 First Edition 2006–08–15 Sterilization of health care products—Moist heat—Part 1: Requirements for the development, validation, and routine control of a sterilization process for medical devices.	Extent of recognition.
14–337		ISO 14937 Second Edition 2009–10–15 Sterilization of health care products—General requirements for characterization of a sterilizing agent and the development, validation, and routine control of a sterilization process for medical devices.	Extent of recognition.
14–338		ISO 11138–1 Second Edition 2006–07–01 Sterilization of health care products—Biological indicators—Part 1: General requirements.	Extent of recognition.
14–339		ANSI/AAMI/ISO 20857:2010 Sterilization of health care products—Dry heat—Requirements for the development, validation, and routine control of a sterilization process for medical devices.	Extent of recognition.
14–340		ISO 20857 First Edition 2010–08–15 Sterilization of health care products—Dry heat—Requirements for the development, validation, and routine control of a sterilization process for medical devices.	Extent of recognition.
14–349		ANSI/AAMI/ISO 13408–3:2006/(R)2015 Aseptic processing of health care products—Part 3: Lyophilization.	Reaffirmation.
14–351		ANSI/AAMI/ISO 13408–5:2006/(R)2015 Aseptic processing of health care products—Part 5: Sterilization in place.	Reaffirmation.
14–376		ANSI/AAMI/ISO TIR17665–2:2009 Sterilization of health care products—Moist heat—Part 2: Guidance on the application of ANSI/AAMI/ISO 17665–1.	Extent of recognition.
14–407		ISO 11737–1 Second Edition 2006–04–01 Sterilization of medical devices—Microbiological methods—Part 1: Determination of a population of microorganisms on products [Including: Technical Corrigendum 1 (2007)].	Extent of recognition.
14–409		ISO 11137–2 Third Edition 2013–06–01 Sterilization of health care products—Radiation—Part 2: Establishing the sterilization dose.	Extent of recognition.
14–428		ISO 11137–1 First Edition 2006–04–15 Sterilization of health care products—Radiation—Part 1: Requirements for development, validation, and routine control of a sterilization process for medical devices [Including: Amendment 1 (2013)].	Extent of recognition.
14–438		ANSI/AAMI/ISO 11137–2:2013 Sterilization of health care products—Radiation—Part 2: Establishing the sterilization dose.	Extent of recognition.
14–452		ISO 11135 Second Edition 2014, Sterilization of health care products—Ethylene oxide—Requirements for development, validation, and routine control of a sterilization process for medical devices.	Extent of recognition.
14–461		ANSI/AAMI/ISO 11137–1:2006/(R) 2010 Sterilization of health care products—Radiation—Part 1: Requirements for development, validation, and routine control of a sterilization process for medical devices [Including: Amendment 1 (2013)].	Extent of recognition.
R. Tissue Engineering			
15–8	15–42	ASTM F2064–14 Standard Guide for Characterization and Testing of Alginates as Starting Materials Intended for Use in Biomedical and Tissue Engineered Medical Product Applications.	Withdrawn and replaced with newer version.
15–22	15–43	ASTM F2791–15 Standard Guide for Assessment of Surface Texture of Non-Porous Biomaterials in Two Dimensions.	Withdrawn and replaced with newer version.
15–24		ASTM F2721–09 (Reapproved 2014) Standard Guide for Pre-clinical in vivo Evaluation in Critical Size Segmental Bone Defects.	Reaffirmation.

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[1] All standard titles in this table conform to the style requirements of the respective organizations.

III. Listing of New Entries

In table 2, FDA provides the listing of new entries and consensus standards added as modifications to the list of recognized standards under Recognition List Number: 041.

TABLE 2—NEW ENTRIES TO THE LIST OF RECOGNIZED STANDARDS

Recognition No.	Title of standard[1]	Reference No. and date
A. Anesthesia		
1–107	Anaesthetic and Respiratory Equipment—Conical Connectors—Part 1: Cones and Sockets.	ANSI/AAMI/ISO 5356–1:2004.
1–108	Anaesthetic and Respiratory Equipment—Tracheal Tubes and Connectors.	ANSI/AAMI/ISO 5361:2012.
1–109	Anaesthetic Reservoir Bags	ANSI/AAMI/ISO 5362:2006.
1–110	Anaesthetic and Respiratory Equipment—Tracheostomy Tubes—Part 1: Tubes and Connectors for Use in Adults.	ANSI/AAMI/ISO 5366–1:2000.
1–111	Anaesthetic and Respiratory Equipment—Tracheostomy Tubes—Part 3: Paediatric Tracheostomy Tubes.	ANSI/AAMI/ISO 5366–3:2001.
1–112	Lung Ventilators—Part 4: Particular Requirements for Operator-Powered Resuscitators.	ANSI/AAMI/ISO 10651–4:2002.
1–113	Lung Ventilators for Medical Use—Particular Requirements for Basic Safety and Essential Performance—Part 5: Gas-powered Emergency Resuscitators.	ANSI/AAMI/ISO 10651–5:2006.
1–114	Inhalational Anaesthesia Systems—Draw-over Anaesthetic Systems.	ISO 18835 First Edition 2015–04–01.
1–115	Medical Electrical Equipment—Part 2–70: Particular Requirements for Basic Safety and Essential Performance of Sleep Apnoea Breathing Therapy Equipment.	ISO 80601–2–70 First Edition 2015–01–15.
B. Biocompatibility		
2–223	Standard Guide for Selecting Tests to Evaluate Potential Neurotoxicity of Medical Devices.	ASTM F2901–13.
2–225	Standard Practice for Testing for Classical Complement Activation in Serum By Solid Materials.	ASTM F2567–06 (Reapproved 2010).
C. Cardiovascular		
3–140	Cardiovascular implants—Cardiac valve prostheses—Part 3: Heart valve substitutes implanted by transcatheter techniques.	ANSI/AAMI/ISO 5840–3: 2013.
3–141	Implants for surgery—Cardiac pacemakers—Part 3: Low-profile connectors (IS–1) for implantable pacemakers.	ANSI/AAMI/ISO 5841–3: 2013.
D. Dental/ENT		
4–226	Dentistry—Powered polymerization activators	ISO 10650 First Edition 2015–09–01.
E. General I (Quality Systems/Risk Management)		
5–100	Small-bore connectors for liquids and gases in healthcare applications—Part 20: Common test methods.	ANSI/AAMI/ISO 80369–20:2015.
5–101	Small-bore connectors for liquids and gases in healthcare applications—Part 6: Connectors for neuraxial applications.	AAMI/CN6:2015.
F. General II (ES/EMC)		
19–17	American National Standard Recommended Practice for an On-Site, Ad Hoc Test Method for Estimating Electromagnetic Immunity of Medical Devices to Radiated Radio-Frequency (RF) Emissions from RF Transmitters.	ANSI/IEEE C63.18–2014.
19–18	Safety requirements for electrical equipment for measurement, control, and laboratory use—Part 1: General requirements [Including: Corrigendum 1 (2011)].	IEC 61010–1 Edition 3.0 2010–06.

TABLE 2—NEW ENTRIES TO THE LIST OF RECOGNIZED STANDARDS—Continued

Recognition No.	Title of standard [1]	Reference No. and date
G. GH/GPS		
6–357	Intravascular Catheters—Sterile and Single-use Catheters—Part 6: Subcutaneous Implanted Ports.	ISO 10555–6 First Edition 2015–04–15.
6–358	Infusion Equipment for Medical Use—Part 8: Infusion Sets for Single Use with Pressure Infusion Apparatus.	ISO 8536–8 Second Edition 2015–06–15.
6–359	Infusion Equipment for Medical Use—Part 9: Fluid Lines for Single Use with Pressure Infusion Equipment.	ISO 8536–9 Second Edition 2015–06–15.
6–360	Infusion Equipment for Medical Use—Part 10: Accessories for Fluid Lines for Single Use with Pressure Infusion Equipment.	ISO 8536–10 Second Edition 2015–06–15.
6–361	Infusion Equipment for Medical Use—Part 11: Infusion Filters for Single Use with Pressure Infusion Equipment.	ISO 8536–11 Second Edition 2015–06–15.
H. Materials		
8–407	Standard Specification for Additive Manufacturing File Format (AMF) Version 1.1.	ISO/ASTM 52915 First Edition 2013–06–01.
8–408	Standard Guide for Evaluating Mechanical Properties of Metal Materials Made via Additive Manufacturing Processes.	ASTM F3122–14.
8–409	Standard Specification for Additive Manufacturing Titanium-6 Aluminum-4 Vanadium with Powder Bed Fusion.	ASTM F2924–14.
8–410	Standard Guide for Assessment of Absorbable Polymeric Implants.	ASTM F2902–12.
8–411	Specification for Amorphous Poly(lactide) and Poly(lactide-co-glycolide) Resins for Surgical Implants.	ASTM F2579–10.
8–412	Standard Practice for Calibration of Linear Displacement Sensor Systems Used to Measure Micromotion.	ASTM F2537–06 (Reapproved 2011).
8–413	Standard Test Methods for Measurement of Straightness of Bar, Rod, Tubing, and Wire to be used for Medical Devices.	ASTM F2819–10 (Reapproved 2015).
8–414	Standard Practice for Reporting and Assessment of Residues on Single Use Implants.	ASTM F2847–10.
8–415	Standard Test Method for Measurement of Percent Crystallinity of Polyetheretherketone (PEEK) Polymers by Means of Specular Reflectance Fourier Transform Infrared Spectroscopy (R–FTIR)..	ASTM F2778–09 (Reapproved 2015).
8–416	Standard Test Method for Small Punch Testing of Polymeric Biomaterials Used in Surgical Implants.	ASTM F2977–13.
8–417	Test Method for Standard Test Method for Evaluating the Potential for Galvanic Corrosion for Medical Implants.	ASTM F3044–14.
8–418	Standard Test Methods for Determining Radiopacity for Medical Use.	ASTM F640–12.
8–419	Standard Specification for Metal Injection Molded Titanium-6 Aluminum-4 Vanadium Components for Surgical Implant Applications.	ASTM F2885–11.
8–420	Standard Specification for Metal Injection Molded Cobalt-28 Chromium-6 Molybdenum Components for Surgical Implant Applications.	ASTM F2886–10.
I. Ophthalmic		
10–100	Ophthalmic optics—Contact lens care products—Method to assess contact lens care products with contact lenses in a lens case, challenged with bacterial and fungal organisms.	ISO 18259 First Edition 2014–10–01.
J. Orthopedic		
11–303	Standard Guide for High Demand Hip Simulator Wear Testing of Hard-on-hard Articulations.	ASTM F3047M–15.

TABLE 2—NEW ENTRIES TO THE LIST OF RECOGNIZED STANDARDS—Continued

Recognition No.	Title of standard[1]	Reference No. and date
11–304	Measuring Accuracy after Mechanical Disturbances.	ASTM F3107–14.
	K. Physical Medicine	
16–196	Wheelchairs—Part 7: Measurement of seating and wheel dimensions.	ISO 7176–7 First Edition 1998–05–15.
16–197	Wheelchairs—Part 8: Requirements and test methods for static, impact, and fatigue strengths.	ISO 7176–8 Second Edition 2014–12–15.
16–198	Wheelchairs—Part 22: Set-up procedures	ISO 7176–22 Second Edition 2014–09–01.
	L. Software/Informatics	
13–81	Health informatics—Personal health device communication—Part 10419: Device Specialization—Insulin Pump.	IEEE Std. 11073–10419: 2015.
	M. Sterility	
14–479	Sterilization of health care products—Ethylene oxide—Requirements for development, validation, and routine control of a sterilization process for medical devices.	ANSI/AAMI/ISO 11135:2014.
	N. Tissue Engineering	
15–44	Standard Guide for in vivo Evaluation of Osteoinductive Potential for Materials Containing Demineralized Bone (DBM) Active Standard.	ASTM F2529–13.

[1] All standard titles in this table conform to the style requirements of the respective organizations.

IV. List of Recognized Standards

FDA maintains the Agency's current list of FDA Recognized Consensus Standards in a searchable database that may be accessed directly at FDA's Internet site at *http://www.accessdata.fda.gov/scripts/cdrh/cfdocs/cfStandards/search.cfm*. FDA will incorporate the modifications and revisions described in this notice into the database and, upon publication in the **Federal Register**, this recognition of consensus standards will be effective. FDA will announce additional modifications and revisions to the list of recognized consensus standards, as needed, in the **Federal Register**, once a year or more often if necessary. Beginning with Recognition List: 033, FDA no longer announces minor revisions to the list of recognized consensus standards such as technical contact person, devices affected, processes affected, Code of Federal Regulations citations, and product codes.

V. Recommendation of Standards for Recognition by FDA

Any person may recommend consensus standards as candidates for recognition under section 514 of the FD&C Act by submitting such recommendations, with reasons for the recommendation, to *standards@cdrh.fda.gov*. To be properly considered, such recommendations should contain, at a minimum, the following information: (1) Title of the standard, (2) any reference number and date, (3) name and address of the national or international standards development organization, (4) a proposed list of devices for which a declaration of conformity to this standard should routinely apply, and (5) a brief identification of the testing or performance or other characteristics of the device(s) that would be addressed by a declaration of conformity.

VI. Electronic Access

You may obtain a copy of "Guidance on the Recognition and Use of Consensus Standards" by using the Internet. The Center for Devices and Radiological Health (CDRH) maintains a site on the Internet for easy access to information including text, graphics, and files that you may download to a personal computer with access to the Internet. Updated on a regular basis, the CDRH home page, *http://www.fda.gov/MedicalDevices*, includes a link to standards-related documents including the guidance and the current list of recognized standards. After publication in the **Federal Register**, this notice announcing "Modification to the List of Recognized Standards, Recognition List Number: 041" will be available at *http://www.fda.gov/MedicalDevices/DeviceRegulationandGuidance/Standards/ucm123792.htm*. You may access "Guidance on the Recognition and Use of Consensus Standards," and the searchable database for "FDA Recognized Consensus Standards," at *http://www.fda.gov/MedicalDevices/DeviceRegulationandGuidance/Standards*.

Dated: March 29, 2016.

Leslie Kux,

Associate Commissioner for Policy.

[FR Doc. 2016–07467 Filed 4–1–16; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Solicitation for Applications From Individuals Interested in Being Appointed to the Chronic Fatigue Syndrome Advisory Committee

AGENCY: Office of the Assistant Secretary for Health, Office of the Secretary, Department of Health and Human Services.

ACTION: Notice.

Authority: 42 U.S.C. 217a, section 222 of the Public Health Service (PHS) Act, as amended. The Committee is governed by the provisions of Public Law 92–463, as amended (5 U.S.C. App 2), which sets forth standards for the formation and use of advisory committees.

SUMMARY: The Office of the Assistant Secretary for Health (OASH), within the Department of Health and Human Services (HHS), is seeking nominations of qualified candidates to be considered for appointment as a member of the Chronic Fatigue Syndrome Advisory Committee (CFSAC). CFSAC provides advice and recommendations to the Secretary of HHS, through the Assistant Secretary for Health (ASH), on a broad range of issues and topics related to myalgic encephalomyelitis/chronic fatigue syndrome (ME/CFS). The appointments of several Committee members are scheduled to end during the 2016 calendar year. Nominations of qualified candidates are being sought to fill the positions that are scheduled to be vacated.

DATES: Applications for individuals to be considered for appointment to the Committee must be received no later than 5 p.m. ET on April 25, 2016 at the address listed below.

ADDRESSES: All nominations should be mailed or delivered to Nancy C. Lee, Designated Federal Officer, Chronic Fatigue Syndrome Advisory Committee, Office on Women's Health, Office of the Assistant Secretary for Health, Department of Health and Human Services, 200 Independence Avenue SW., Room 712E, Washington, DC 20201. Nomination materials, including attachments, may be submitted electronically to *cfsac@hhs.gov* .

FOR FURTHER INFORMATION CONTACT: Nancy C. Lee, Designated Federal Officer, Chronic Fatigue Syndrome Advisory Committee, Office on Women's Health, Office of the Assistant Secretary for Health, Department of Health and Human Services, 200 Independence Ave. SW., Room 712E, Washington, DC 20201. Inquiries may also be made to *cfsac@hhs.gov.*

SUPPLEMENTARY INFORMATION: CFSAC was established on September 5, 2002. The purpose of the CFSAC is to provide advice and recommendations to the Secretary of HHS, through the ASH, on issues related to ME/CFS. CFSAC advises and makes recommendations on a broad range of topics including: (1) The current state of knowledge and research; the relevant gaps in knowledge and research about the epidemiology, etiologies, biomarkers, and risk factors relating to ME/CFS; and identifying potential opportunities in these areas; (2) impact and implications of current and proposed diagnostic and treatment methods for ME/CFS; (3) development and implementation of programs to inform the public, health care professionals, and the biomedical, academic, and research communities about ME/CFS advances; and (4) strategies to improve the quality of life of ME/CFS patients. The CFSAC charter is available at *http://www.hhs.gov/advcomcfs/charter/index.html.*

Management and support services for Committee activities are provided by staff within the OASH. The ASH provides directions and guidance for services performed to support CFSAC activities and operation.

Nominations: OASH is requesting nominations to fill CFSAC positions that are scheduled to be vacated during 2016. The Committee composition consists of seven scientists with demonstrated expertise in biomedical research applicable to ME/CFS, and four individuals with demonstrated expertise in health care delivery, private health care services, or insurance, or voluntary organizations concerned with the problems of individuals living with ME/CFS. The vacant positions are in the biomedical research, health care services and delivery categories.

Individuals selected for appointment to the Committee will serve as voting members and may be invited to serve terms of up to four years.

To qualify for consideration of appointment to the Committee, an individual must possess demonstrated experience and knowledge in the designated fields or disciplines, as well as expert knowledge of the broad issues and topics pertinent to ME/CFS.

CFSAC members are authorized to receive a stipend for attending Committee meetings. Committee members also are authorized to receive per diem and reimbursement for travel expenses incurred for conducting Committee business.

Nomination materials should be typewritten. If mailed, please submit original documents. The nomination materials should be submitted (postmarked or received) no later than 5:00p.m. EDT on the date specified under **DATES**. The following information must be part of the nomination package submitted for each individual being nominated: (1) A letter of nomination that clearly states the name and affiliation of the nominee, the basis for the nomination (*i.e.,* specific attributes which qualify the nominee for service in this capacity), and a statement that the nominee is willing to serve as a member of the Committee; (2) the nominator's name, address, and daytime telephone number; (3) the home and/or work address, telephone number, and email address of the individual being nominated; and (4) a current copy of the nominee's curriculum vitae or resume. An individual may self-nominate. Federal employees should not be nominated for consideration of appointment to this Committee. Nominations that do not contain all the above information will not be considered.

Electronic submissions: Nomination materials, including attachments, may be submitted electronically to *cfsac@hhs.gov.*

Telephone and facsimile submissions cannot be accepted.

Regular, Express, or Overnight Mail: Written documents may be submitted to the following addressee only: Nancy C. Lee, Designated Federal Officer, CFSAC, Office on Women's Health, Office of the Assistant Secretary for Health, Department of Health and Human Services, 200 Independence Ave. SW., Room 712E, Washington, DC 20201.

Appointment to the Committee is made by the Secretary of HHS. The Department makes every effort to ensure that the membership of federal advisory committees is fairly balanced in terms of points of view represented. Every effort is made to ensure that a broad representation of geographic areas, females, ethnic and minority groups, and people with disabilities are given consideration for membership on federal advisory committees. Appointment to this Committee shall be made without discrimination on the basis of age, race, ethnicity, gender, sexual orientation, disability, and cultural, religious, or socioeconomic status. Nominations must state that the nominee is willing to serve as a member of CFSAC and appears to have no conflict of interest that would preclude membership. Potential candidates are required to provide detailed information concerning such matters as financial holdings, consultancies, and research grants or contracts for an ethics analysis to be conducted to identify potential conflicts of interest.

Dated: March 25, 2016.

Nancy C. Lee,

Designated Federal Officer. Chronic Fatigue Syndrome Advisory Committee

[FR Doc. 2016–07593 Filed 4–1–16; 8:45 am]

BILLING CODE 4150–42–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Precision Medicine Initiative Cohort Program Biobank.

Date: April 18, 2016.

Time: 9:00 a.m. to 3:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Lorien Hotel & Spa, 1600 King Street, Alexandria, VA 22314.

Contact Person: Delia Olufokunbi Sam, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3158, MSC 7770, Bethesda, MD 20892, 301–435–0684, *olufokunbisamd@csr.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: March 29, 2016.

Natasha M. Copeland,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2016–07489 Filed 4–1–16; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis Panel; Extramural Loan Repayment Program for Clinical Research (LRP–CR) NOT–OD–15–121 and Extramural Loan Repayment Program for Clinical Research (LRP–PR) NOT–OD–15–122.

Date: April 24–30, 2016.

Time: 12:00 p.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 5601 Fishers Lane, Rockville, MD 20892 (Telephone Conference Call).

Contact Person: Annie Walker-Abbey, Scientific Review Officer, Scientific Review Program, NIAID/NIH/DHHS, 5601 Fishers Lane, Room 3E70A, Rockville, MD 20852, 240–627–3390, *aabbey@niaid.nih.gov.*

Name of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis Panel; NIAID Clinical Trial Planning Grant (R34) and Implementation Cooperative Agreement (U01).

Date: May 3, 2016.

Time: 12:30 p.m. to 4:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Room NIAID 4H100 Resource Library, 5601 Fishers Lane, Rockville, MD 20892 (Telephone Conference Call).

Contact Person: Maryam Feili-Hariri, Ph.D., Scientific Review Officer, Scientific Review Program, Division of Extramural Activities, National Institutes of Health/NIAID, 5601 Fishers Lane, Rockville, MD 20852, 240–669–5026, *haririmf@niaid.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS).

Dated: March 28, 2016.

Natasha M. Copeland,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2016–07498 Filed 4–1–16; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Proposed Collection; 60 Day Comment Request; Women's Health Initiative (NHLBI)

Summary: In compliance with the requirement of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, for opportunity for public comment on proposed data collection projects, the National Heart, Lung, and Blood Institute (NHLBI), the National Institutes of Health (NIH), will publish periodic summaries of proposed projects to the Office of Management and Budget (OMB) for review and approval.

Written comments and/or suggestions from the public and affected agencies are invited on one or more of the following points: (1) Whether the proposed collection of information is necessary for the proper performance of the function of the agency, including whether the information will have practical utility; (2) The accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) Ways to enhance the quality, utility, and clarity of the information to be collected; and (4) Ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

To Submit Comments and for Further Information: To obtain a copy of the data collection plans and instruments, submit comments in writing, or request more information on the proposed project, contact: Shari Ludlam, 6701 Rockledge Drive, MSC 7936, Bethesda, MD 20892, or call non-toll-free number (301) 435–6667, or Email your request to: *ludlams@mail.nih.gov.* Formal requests for additional plans and instruments must be requested in writing.

Comments Due Date: Comments regarding this information collection are best assured of having their full effect if received within 60 days of the date of this publication.

Proposed Collection: The Women's Health Initiative, 0925–0414, Revision, Exp. 7/31/2016, National Heart, Lung, and Blood Institute (NHLBI), the National Institutes of Health (NIH).

Need and Use of Information Collection: This proposal is to extend the Women's Health Initiative (WHI), which comprises a group of research studies that will address critical issues about the most common causes of frailty, disability, and death among post-menopausal women aged 50 to 79 years. This Initiative is comprised of two main investigational approaches: (1) A large clinical trial (CT) to evaluate the clinical efficacy of promising, but unproven preventive approaches for specific diseases common among older women; and (2) a companion observational study (OS) comprised of women ineligible or unwilling to participate in the CT, to evaluate risk factors for chronic diseases by following this large cohort of women and relating subsequent disease development to baseline assessments of historical, physical, and physiologic characteristics. The WHI provides new information on health and risk of disease among older post-menopausal women to inform development of approaches to disease prevention. The specific objectives of the OS are to provide reliable estimates of the extent to which known risk factors predict heart disease, cancers and fractures; identify new risk factors for these and other diseases in women; compare risk factors, presence of disease at the start of the study, and new occurrences of disease during the WHI in all study components; and create a future resource to identify biological indicators of disease, especially substances and factors found in the blood. Continued follow-up of medical outcome occurrences will enhance achievement of the WHI original goals and increase the range of scientific issues that can be examined. Specific biomarkers will be assessed based on current and future hypotheses related to clinical endpoints. The WHI study/protocol allows for analysis and presentation of results in aggregate form only, thus all data including biological samples are void of personal identifiers.

OMB approval is requested for 3 years. There are no costs to respondents other than their time. The total estimated annualized burden hours are 10,796.

A.12–1—ESTIMATED ANNUALIZED BURDEN HOURS

Form name	Type of respondent	Number of respondents	Number of responses per respondent	Average burden per response (in hours)	Total annual burden hours
Form 33 Medical History Update	OS Participants	40203	1	7/60	4690
Form 151 Activities of Daily Life	OS Participants	40203	1	6/60	4020
Form 20 Personal Information Update	OS Participants	40203	1	3/60	2010
Form 120 Initial Notification of Death	Next of Kin	900	1	5/60	75
Form 120 Initial Notification of Death	Physician/Office Staff	15	1	5/60	1
Total		41,118	41,118		10,796

Dated: March 23, 2016.

Valery Gheen,

NHLBI Project Clearance Liaison, National Institutes of Health.

[FR Doc. 2016–07487 Filed 4–1–16; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Office of the Director, National Institutes of Health; Notice of Meeting

Notice is hereby given of a meeting of the Big Data to Knowledge Multi-Council Working Group.

The teleconference meeting will be open to the public as indicated below. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

Name of Working Group: Big Data to Knowledge Multi-Council Working Group.

Date: April 25, 2016.

Open: 11:00 a.m. to 12:30 p.m.

Agenda: April 2016 MCWG Open Session, Discussion will review current Big Data to Knowledge (BD2K) activities and newly proposed BD2K initiatives.

Place: Teleconference, Join WebEx meeting, Telephone Number: 1–877–668–4493, Meeting Number: 622 421 867.

Note: This portion of the meeting is open to the public but is being held by teleconference only. No physical meeting location is provided for any interested individuals to listen to committee discussions. Any individual interested in listening to the meeting discussions must call: 1–877–668–4493 and use Meeting number: 622 421 867 for access to the meeting. Participants can also join in on the viewing the presentation by clicking the following link Join WebEx meeting.

Any interested person may file written comments with the working group or submit questions by sending an email to the Contact Person listed on this notice. The email should include the name, addresses, telephone number and when applicable, the business or professional affiliation of the interested person.

Closed: 12:30 p.m.–3:30 p.m.

Agenda: April 2016 MCWG Closed Session, Discussion will focus on review of proposed Funding Plans for BD2K Funding Opportunity Announcements.

Place: Teleconference.

Contact Person: Tonya Scott, Scientific Program Analyst, Office of the Associate Director of Data Science (ADDS), National Institutes of Health, 1 Center Drive, Room 325, Bethesda, MD 20892, email: *tonya.scott@nih.gov*, Telephone: 301–402–9817.

Additional information on data science is available at: *https://datascience.nih.gov/index* and additional information on the Working Group is available at: *https://datascience.nih.gov/bd2k/about/org/MCWG.*

Dated: March 29, 2016.

Anna Snouffer,

Deputy Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2016–07542 Filed 4–1–16; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center For Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel, AIDS and Related Research Member Conflicts: Opportunistic Infections.

Date: April 12, 2016.

Time: 1:00 p.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Robert Freund, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5216, MSC 7852, Bethesda, MD 20892, 301–435–1050, *freundr@csr.nih.gov*.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, RFA RM13–006: Pioneer Awards.

Date: April 25–27, 2016.

Time: 8:00 a.m. to 4:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Doubletree Hotel Bethesda, (Formerly Holiday Inn Select), 8120 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: James W. Mack, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4154, MSC 7806, Bethesda, MD 20892, (301) 435–2037, *mackj2@csr.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: March 29, 2016.

Melanie J. Gray,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2016–07546 Filed 4–1–16; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Cancer Institute Special Emphasis Panel; NCI Program Project II.

Date: June 7–8, 2016.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Doubletree Hotel Bethesda, 8120 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Robert Bird, Ph.D., Scientific Review Officer, Resources and Training Review Branch, Division of Extramural Activities, National Cancer Institute, 9609 Medical Center Drive, Room 7W110, Bethesda, MD 20892–9750, 240–276–6344, *birdr@mail.nih.gov*.

Name of Committee: National Cancer Institute Special Emphasis Panel; NCI Program Project IV.

Date: June 8, 2016.

Time: 2:00 p.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Cancer Institute, Shady Grove, 9609 Medical Center Drive, Room 7W122, Rockville, MD 20850, (Telephone Conference Call).

Contact Person: Shakeel Ahmad, Ph.D., Scientific Review Officer, Research Programs Review Branch, Division Of Extramural Activities, National Cancer Institute, 9609 Medical Center Drive, Room 7W122, Bethesda, MD 20892–9750, 240–276–6349, *ahmads@mail.nih.gov*.

Name of Committee: National Cancer Institute Initial Review Group; Subcommittee J—Career Development.

Date: June 8–9, 2016.

Time: 6:00 p.m. to 2:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Tushar B. Deb, Ph.D., Scientific Review Officer, Resources and Training Review Branch, Division of Extramural Activities, National Cancer Institute, NIH, 9609 Medical Center Drive, 7W624, Rockville, MD 20850, 240–276–6132, *tushar.deb@mail.nih.gov*.

Name of Committee: National Cancer Institute Special Emphasis Panel; SPORE Review II.

Date: June 15–16, 2016.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Bethesda North Marriott Hotel & Conference Center, 5701 Marinelli Road, Bethesda, MD 20852.

Contact Person: Wlodek Lopaczynski, Ph.D., Scientific Review Officer, Research Programs Review Branch, Division of Extramural Activities, National Cancer Institute, NIH, 9609 Medical Center Drive, Room 7W608, Rockville, MD 20850, 240–276–6458, *lopacw@mail.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: March 28, 2016.

Melanie J. Gray,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2016–07481 Filed 4–1–16; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis Panel; NIAID SBIR Phase II Clinical Trial Implementation Cooperative Agreement (U44).

Date: May 4, 2016.

Time: 1:00 p.m. to 4:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Room NIAID, Team Room 3G61, 5601 Fishers Lane, Rockville, MD 20892 (Telephone Conference Call).

Contact Person: B. Duane Price, Ph.D., Scientific Review Officer Scientific Review Program, Division of Extramural Activities, Rm. 3G50, National Institutes of Health, NIAID, 5601 Fishers Lane, MSC 9834, Bethesda, MD 20892–9834, 240–669–5074, *pricebd@niaid.nih.gov*.

Name of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis Panel; NIAID Investigator Initiated Program Project Application (P01).

Date: May 9, 2016.

Time: 8:00 a.m. to 4:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Room NIAID, 3C100 Resource Library, 5601 Fishers Lane, Rockville, MD 20892 (Telephone Conference Call).

Contact Person: Amir E. Zeituni, Ph.D., Scientific Review Officer, Scientific Review Program, Division of Extramural Activities, NIAID/NIH/DHHS, 5601 Fishers Lane, MSC–9834, Rockville, MD 20852, 301–496–2550, *amir.zeituni@nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS).

Dated: March 28, 2016.

Natasha M. Copeland,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2016–07499 Filed 4–1–16; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Eye Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Eye Institute Special Emphasis Panel; NEI Secondary Data Analysis and Conference Grant Applications.

Date: April 19–20, 2016.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institute of Health, 5635 Fishers Lane, Rockville, MD 20814 (Virtual Meeting).

Contact Person: Anna E. Mazzucco, Ph.D., Scientific Review Officer, National Eye Institute, National Institutes of Health, Division of Extramural Research, 5635 Fishers Lane, Suite 1300, Bethesda, MD 20852, 301–594–6074, *anna.mazzucco@nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.867, Vision Research, National Institutes of Health, HHS)

Dated: March 29, 2016.

Natasha M. Copeland,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2016–07501 Filed 4–1–16; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Human Genome Research Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Inherited Disease Research Access Committee.

Date: April 29, 2016.

Time: 11:30 a.m. to 2:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 5635 Fishers Lane, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Barbara J. Thomas, Ph.D., Scientific Review Officer, Scientific Review Branch, National Human Genome Research Institute, National Institutes of Health, 5635 Fishers Lane, Ste. 4076, MSC 9306, Bethesda, MD 20892–9306, 301–402–0838, *barbara.thomas@nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.172, Human Genome Research, National Institutes of Health, HHS)

Dated: March 29, 2016.

Melanie J. Gray,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2016–07503 Filed 4–1–16; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Meeting

Pursuant to section 10(a) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of a meeting of the Frederick National Laboratory Advisory Committee to the National Cancer Institute.

The meeting will be open to the public, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting. The meeting will also be videocast and can be accessed from the NIH Videocasting and Podcasting Web site (*http://videocast.nih.gov/*).

Name of Committee: Frederick National Laboratory Advisory Committee to the National Cancer Institute.

Date: May 11, 2016.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: Ongoing and new activities at the Frederick National Laboratory for Cancer Research.

Place: National Cancer Institute Shady Grove, 9609 Medical Center Drive, Conference Room TE406, Rockville, MD 20850.

Contact Person: Peter L. Wirth, Ph.D. Executive Secretary, National Cancer Institute, National Institutes of Health, 9609 Medical Center Drive, Room 7W–514, Bethesda, MD 20892, 240–276–6434, *wirthp@mail.nih.gov.*

Any interested person may file written comments with the committee by forwarding the statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

In the interest of security, NCI Shady Grove has instituted stringent procedures for entrance into the NCI Shady Grove building. Visitors will be asked to show one form of identification (for example, a government-issued photo ID, driver's license, or passport) and to state the purpose of their visit.

Information is also available on the Institute's/Center's home page: *http://deainfo.nci.nih.gov/advisory/fac/fac.htm,* where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: March 29, 2016.

Melanie J. Gray,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2016–07484 Filed 4–1–16; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Prospective Grant of Exclusive License: Development of 5T4 Antibodies in Human Cancer Therapeutics and Diagnostics

AGENCY: National Institutes of Health, HHS.

ACTION: Notice.

SUMMARY: This notice, in accordance with 35 U.S.C. 209 and 37 CFR part 404, that the National Cancer Institute, National Institutes of Health, Department of Health and Human Services, is contemplating the grant of an exclusive patent license to practice the inventions embodied in the following U.S. Patents and Patent Applications to Ovensa, Inc. ("Ovensa") located in Ontario, Canada.

Intellectual Property

U.S. Provisional Patent Application No. 62/034,995 filed August 8, 2014 entitled "Human Monoclonal Antibodies Specific for 5T4 and Methods of Their Use" [HHS Ref. No. E–158–2014/0–US–01];

PCT Application No. PCT/US2015/044253 filed August 8, 2015 entitled "Human Monoclonal Antibodies Specific for 5T4 and Methods of Their Use" [HHS Ref. No. E–158–2014/0–PCT–02].

The patent rights in these inventions have been assigned to the government of the United States of America.

The prospective exclusive license territory may be worldwide and the field of use may be limited to "the use of the Licensed Patent Rights in combination with the Licensee's proprietary or exclusively in-licensed platforms and technologies for the treatment, prevention or diagnosis of cancer."

DATES: Only written comments and/or applications for a license which are received by the Technology Transfer Center at the National Cancer Institute on or before April 19, 2016 will be considered.

ADDRESSES: Requests for copies of the patent application, inquiries, and comments relating to the contemplated exclusive license should be directed to: Rose Freel, Ph.D., Licensing and Patenting Manager, Technology Transfer Center, National Cancer Institute, 8490 Progress Drive, Riverside 5, Suite 400, Frederick, MD 21702; Telephone: (301) 624–1257; Email: *rose.freel@nih.gov.*

SUPPLEMENTARY INFORMATION: 5T4 is an antigen expressed on many different types of cancers, especially solid tumors. Its expression is limited in normal tissue, but is prevalent in malignant tumors throughout their development making it an attractive target for cancer immunotherapy. 5T4 is often found in colorectal, ovarian, and gastric tumors and as a result, has been used as a prognostic aid for these cancers. The role of 5T4 in antibody-directed immunotherapy has been studied using murine monoclonal antibodies (mAbs). In addition, the cancer vaccine TroVax (currently in clinical trials for multiple solid tumors) targets 5T4. The present invention describes the identification and characterization of two fully human mAbs (m1001 and m1002) that bind to 5T4. Since the mAbs are fully human, they could have less immunogenicity and better safety profiles than the existing mouse and humanized antibodies. These mAbs have the potential to be cancer therapeutics as naked mAbs, chimeric antigen receptors (CARs) or antibody-drug conjugates (ADCs).

The prospective exclusive license will be royalty bearing and will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR part 404.7. The prospective exclusive license may be granted unless within fifteen (15) days from the date of this published notice, the National Cancer Institute receives written evidence and argument that establishes that the grant of the license would not be consistent with the requirements of 35 U.S.C. 209 and 37 CFR part 404.7.

Applications for a license in the field of use filed in response to this notice will be treated as objections to the grant of the contemplated exclusive license. Comments and objections submitted to this notice will not be made available for public inspection and, to the extent permitted by law, will not be released under the Freedom of Information Act, 5 U.S.C. 552.

Dated: March 29, 2016.

Richard U. Rodriguez,

Associate Director, Technology Transfer Center, National Cancer Institute.

[FR Doc. 2016–07556 Filed 4–1–16; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel; AIDS and Related Research NAED Conflicts.

Date: April 5, 2016.

Time: 10:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Robert Freund, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5216, MSC 7852, Bethesda, MD 20892, 301–435–1050, *freundr@csr.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel; PAR16–028: HIV/AIDS Vaccine Scholars Program.

Date: April 7, 2016.

Time: 1:00 p.m. to 4:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Barna Dey, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3184, Bethesda, MD 20892, 301–451–2796, *bdey@mail.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel; PAR Panel: Multidisciplinary Studies on HIV and Aging.

Date: April 8, 2016.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892.

Contact Person: Shiv A. Prasad, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5220, MSC 7852, Bethesda, MD 20892, 301–443–5779, *prasads@csr.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: March 29, 2016.

Melanie J. Gray,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2016–07483 Filed 4–1–16; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Aging Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the National Institute on Aging Special Emphasis Panel, May 09, 2016, 12:00 p.m. to May 09, 2016, 04:00 p.m., National Institute on Aging, Gateway Building, 7201 Wisconsin Ave., 2C212, Bethesda, MD 20892 which was published in the **Federal Register** on March 25, 2016, 81FR16189.

The meeting notice is amended to change the time of the meeting on May 9, 2016 from 12:00 p.m. to 4:00 p.m. to the new time of 9:30 a.m. to 1:30 p.m. The meeting is closed to the public.

Dated: March 28, 2016.

Melanie J. Gray,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2016–07500 Filed 4–1–16; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Deafness and Other Communication Disorders; Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of a meeting of the National Deafness and Other Communication Disorders Advisory Council.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and/or contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications and/or contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Deafness and Other Communication Disorders Advisory Council.

Date: May 20, 2016.

Closed: 8:30 a.m. to 9:40 a.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Building 31, Room 6, 31 Center Drive, Bethesda, MD 20892.

Open: 9:40 a.m. to 2:00 p.m.

Agenda: Staff reports on divisional, programmatic, and special activities

Place: National Institutes of Health, Building 31, Room 6, 31 Center Drive, Bethesda, MD 20892.

Contact Person: Craig A. Jordan, Ph.D., Director, Division of Extramural Activities NIDCD, NIH, Room 8345, MSC 9670, 6001 Executive Blvd., Bethesda, MD 20892–9670, 301–496–8693, *jordanc@nidcd.nih.gov.*

Any interested person may file written comments with the committee by forwarding the statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

In the interest of security, NIH has instituted stringent procedures for entrance onto the NIH campus. All visitor vehicles, including taxicabs, hotel, and airport shuttles will be inspected before being allowed on campus. Visitors will be asked to show one form of identification (for example, a government-issued photo ID, driver's license, or passport) and to state the purpose of their visit.

Information is also available on the Institute's/Center's home page: *http://www.nidcd.nih.gov/about/Pages/Advisory-Groups-and-Review-Committees.aspx,* where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.173, Biological Research Related to Deafness and Communicative Disorders, National Institutes of Health, HHS)

Dated: March 24, 2016.

Sylvia L. Neal,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2016–07479 Filed 4–1–16; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Myalgic Encephalomyelitis/Chronic Fatigue Syndrome.

Date: April 5, 2016.

Time: 11:00 a.m. to 4:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: M. Catherine Bennett, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5182, MSC 7846, Bethesda, MD 20892, 301–435–1766, *bennettc3@csr.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: March 29, 2016.

Melanie J. Gray,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2016–07485 Filed 4–1–16; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Neurological Disorders and Stroke; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Neurological Disorders and Stroke Special Emphasis Panel; Child Neurology K12 Review.

Date: April 15, 2016.

Time: 3:00 p.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Rockville, MD 20852, (Telephone Conference Call).

Contact Person: William C. Benzing, Ph.D., Scientific Review Administrator, Scientific Review Branch, NINDS/NIH/DHHS, Neuroscience Center, 6001 Executive Blvd., Suite 3204, MSC 9529, Bethesda, MD 20892–9529, 301–496–0660, *lbenzingw@mail.nih.gov.*

Name of Committee: National Institute of Neurological Disorders and Stroke Special Emphasis Panel; P01 Review.

Date: April 29, 2016.

Time: 10:00 a.m. to 1:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Rockville, MD 20852, (Telephone Conference Call).

Contact Person: Natalia Strunnikova, Ph.D., Scientific Review Administrator, Scientific Review Branch, NINDS/NIH/DHHS, Neuroscience Center, 6001 Executive Blvd., Suite 3204, MSC 9529, Bethesda, MD 20892–9529, 301–402–0288, *Natalia.strunnikova@nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.853, Clinical Research Related to Neurological Disorders; 93.854, Biological Basis Research in the Neurosciences, National Institutes of Health, HHS)

Dated: March 24, 2016.

Sylvia L. Neal,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2016–07497 Filed 4–1–16; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the Center for Scientific Review Special Emphasis Panel, April 13, 2016, 01:00 p.m. to April 13, 2016, 04:00 p.m., National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 which was published in the **Federal Register** on March 23, 2016, 81 FR 15543.

The meeting will be held on April 7, 2016 at 12:00 p.m.–4:00 p.m. The Panel Name of the meeting will be "Neurophysiology". The location remains the same. The meeting is closed to the public.

Dated: March 25, 2016.

Carolyn Baum,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2016–07480 Filed 4–1–16; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Prospective Grant of Start-Up Exclusive License: Therapeutics for Multiple Sclerosis, Amyotrophic Lateral Sclerosis and Certain Other CNS Disorders

AGENCY: National Institutes of Health, HHS.

ACTION: Notice.

SUMMARY: This is notice, in accordance with 35 U.S.C. 209 and 37 CFR part 404, that the National Institute of Neurological Disorders and Stroke (NINDS), National Institutes of Health (NIH), Department of Health and Human Services, is contemplating the grant of a start-up exclusive license to Great Lakes Neuroscience, Inc., which is located in Illinois, to practice the inventions embodied in the following patents: U.S. Patent 8,597,660, issued December 3, 2013 (HHS reference E–144–2010/0–US–02).

The patent rights in these inventions have been assigned to the United States of America. The prospective start-up exclusive license territory may be worldwide and the field of use may be limited to therapeutics for Multiple sclerosis, Acute Disseminated Encephalomyelitis (ADEM), Balo's disease, Clinically Isolated Syndrome, HTLV–1 Associated Myelopathy (HAM), Neuromyelitis optica and NMO spectrum disorder, Schilder's disease, Traverse myelitis, amyotrophic lateral sclerosis and other motor neuron diseases as follows: progressive bulbar palsy, primary lateral sclerosis, progressive muscular atrophy, spinal muscular atrophy, Kennedy's disease, and post polio syndrome.

DATES: Only written comments and/or applications for a license which are received by NINDS Technology Transfer on or before April 19, 2016 will be considered.

ADDRESSES: Requests for copies of the patent application, inquiries, comments, and other materials relating to the contemplated start-up exclusive license should be directed to: Susan Ano, Ph.D., NINDS Technology Transfer, 31 Center Drive, Suite 8A52, MS2540, Bethesda, MD 20892; Telephone: (301) 435–5515; Email: *anos@mail.nih.gov.*

SUPPLEMENTARY INFORMATION: This invention discloses treating neurodegenerative diseases by administering cyclin dependent kinase 5 (Cdk5) inhibitory peptides derived from P35, the activator of Cdk5. Abnormally hyperactive Cdk5 has been shown to be associated with a variety of neurodegenerative disorders. This invention describes isolated peptide fragments, pharmaceutical compositions and methods for use of such for treating subjects with a neurodegenerative disease, such as Alzheimer's disease (AD), Amyotrophic Lateral Sclerosis (ALS) and Parkinson's disease (PD). An inhibitory fragment, TFP5, disclosed in this invention, has been shown to ameliorate symptoms of AD in disease animal models without any evidence of toxicity. In particular, TFP5 treatment of rat cortical neurons reduced hyperactivation of Cdk5 upon neuronal stress and insults. Following intraperitoneal (ip) injection, TFP5 was capable of crossing the blood-brain barrier and localizing within the brain where it was found to rescue memory deficits and pathology in a double transgenic mouse (APP/PS1) AD model.

The prospective start-up exclusive license may be granted unless within fifteen (15) days from the date of this published notice, the NIH receives written evidence and argument that establishes that the grant of the license would not be consistent with the requirements of 35 U.S.C. 209 and 37 CFR part 404.

Complete applications for a license in the field of use filed in response to this notice will be treated as objections to the grant of the contemplated start-up exclusive license. Comments and objections submitted to this notice will not be made available for public inspection and, to the extent permitted by law, will not be released under the Freedom of Information Act, 5 U.S.C. 552.

Dated: March 24, 2016.

Susan Ano,

Technology Development Coordinator, NINDS Technology Transfer, National Institutes of Health.

[FR Doc. 2016–07496 Filed 4–1–16; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Heart, Lung, and Blood Institute; Amended Notice of Meeting

Notice is hereby given to clarify the meeting times of the Sleep Disorders Research Advisory Board, April 14–15, 2016, NHLBI/National Institutes of Health, Two Rockledge Center, 6701 Rockledge Drive, Conference Room 9100/9104, Bethesda, MD, which was published in the **Federal Register** on March 14, 2016, 81 FR 13399.

Time: April 14 1:00 p.m. to 5:00 p.m., April 15 8:30 a.m. to 3:00 p.m.

Agenda: Information will be presented on the status of selected NIH sleep research programs and inter-agency coordination activities. The Sleep Disorders Research Advisory Board will discuss a potential framework for a revision of the NIH Sleep Disorders Research Plan. The Board will also hear brief presentations from organizations and individuals interested in NIH sleep research programs and planning.

Dated: March 29, 2016.

Anna Snouffer,

Deputy Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2016–07502 Filed 4–1–16; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Aging; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Aging Special Emphasis Panel; Integrative Perspectives in Early Life.

Date: May 4, 2016.

Time: 11:00 a.m. to 2:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institute on Aging, Gateway Building, 2C212, 7201 Wisconsin Avenue, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Carmen Moten, MPH, National Institute on Aging, Gateway Building, 7201 Wisconsin Avenue, Suite 2C212, Bethesda, MD 20892, 301–402–7703 *cmoten@mail.nih.gov.*

Name of Committee: National Institute on Aging Special Emphasis Panel; Nutrient Signaling and Bone Loss.

Date: May 4, 2016.

Time: 1:00 p.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institute on Aging, Gateway Building, Suite 2C212, 7201 Wisconsin Avenue, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Ramesh Vemuri, Ph.D., Chief, Scientific Review Branch, Scientific Review Branch, National Institue On Aging, National Institites Of Health, 7201 Wisconsin Avenue, Suite 2C–212, Bethesda, MD 20892, 301–402–7700, *rv23r@nih.gov*

Name of Committee: National Institute on Aging Special Emphasis Panel; Alzheimer's Disease Drug Development.

Date: May 17, 2016.

Time: 12:00 p.m. to 3:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institute on Aging, The Gateway Building, Suite 2C212, 7201 Wisconsin Avenue, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Alexander Parsadanian, Ph.D., Scientific Review Officer, National Institute On Aging, Gateway Building 2C/212, 7201 Wisconsin Avenue, BETHESDA, MD 20892 301–496–9666 *parsadanian@commat;nia.nih.gov.*

Name of Committee: National Institute on Aging Special Emphasis Panel; Integrative Approach to Delirium and Dementia.

Date: May 18, 2016.

Time: 11:00 a.m. to 3:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Aging, Gateway Building, Suite 2C212, 7201 Wisconsin Avenue, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Isis S. Mikhail, National Institute on Aging, Gateway Building, 7201 Wisconsin Avenue, Suite 2C12, Bethesda, MD 20892301–402–7704 *mikhaili@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.866, Aging Research, National Institutes of Health, HHS)

Dated: March 29, 2016.

Melanie J. Gray,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2016–07547 Filed 4–1–16; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Current List of HHS-Certified Laboratories and Instrumented Initial Testing Facilities Which Meet Minimum Standards To Engage in Urine Drug Testing for Federal Agencies

AGENCY: Substance Abuse and Mental Health Services Administration, HHS.

ACTION: Notice.

SUMMARY: The Department of Health and Human Services (HHS) notifies federal agencies of the laboratories and Instrumented Initial Testing Facilities (IITF) currently certified to meet the standards of the Mandatory Guidelines for Federal Workplace Drug Testing Programs (Mandatory Guidelines). The Mandatory Guidelines were first published in the **Federal Register** on April 11, 1988 (53 FR 11970), and subsequently revised in the **Federal Register** on June 9, 1994 (59 FR 29908); September 30, 1997 (62 FR 51118); April 13, 2004 (69 FR 19644); November 25, 2008 (73 FR 71858); December 10, 2008 (73 FR 75122); and on April 30, 2010 (75 FR 22809).

A notice listing all currently HHS-certified laboratories and IITFs is published in the **Federal Register** during the first week of each month. If any laboratory or IITF certification is suspended or revoked, the laboratory or IITF will be omitted from subsequent lists until such time as it is restored to full certification under the Mandatory Guidelines.

If any laboratory or IITF has withdrawn from the HHS National Laboratory Certification Program (NLCP) during the past month, it will be listed at the end and will be omitted from the monthly listing thereafter.

This notice is also available on the Internet at *http://www.samhsa.gov/workplace*.

FOR FURTHER INFORMATION CONTACT: Giselle Hersh, Division of Workplace Programs, SAMHSA/CSAP, 5600 Fishers Lane, Room 16N03A, Rockville, Maryland 20857; 240–276–2600 (voice).

SUPPLEMENTARY INFORMATION: The Mandatory Guidelines were initially developed in accordance with Executive Order 12564 and section 503 of Pub. L. 100–71. The "Mandatory Guidelines for Federal Workplace Drug Testing Programs," as amended in the revisions listed above, requires strict standards that laboratories and IITFs must meet in order to conduct drug and specimen validity tests on urine specimens for federal agencies.

To become certified, an applicant laboratory or IITF must undergo three rounds of performance testing plus an on-site inspection. To maintain that certification, a laboratory or IITF must participate in a quarterly performance testing program plus undergo periodic, on-site inspections.

Laboratories and IITFs in the applicant stage of certification are not to be considered as meeting the minimum requirements described in the HHS Mandatory Guidelines. A HHS-certified laboratory or IITF must have its letter of certification from HHS/SAMHSA (formerly: HHS/NIDA), which attests that it has met minimum standards.

In accordance with the Mandatory Guidelines dated November 25, 2008 (73 FR 71858), the following HHS-certified laboratories and IITFs meet the minimum standards to conduct drug and specimen validity tests on urine specimens:

HHS-Certified Instrumented Initial Testing Facilities

Dynacare, 6628 50th Street NW., Edmonton, AB Canada T6B 2N7, 780–784–1190 (Formerly: Gamma-Dynacare Medical Laboratories)

HHS-Certified Laboratories

ACM Medical Laboratory, Inc., 160 Elmgrove Park, Rochester, NY 14624, 585–429–2264

Aegis Analytical Laboratories, Inc., 345 Hill Ave., Nashville, TN 37210, 615–255–2400 (Formerly: Aegis Sciences Corporation, Aegis Analytical Laboratories, Inc., Aegis Analytical Laboratories)

Alere Toxicology Services, 1111 Newton St., Gretna, LA 70053, 504–361–8989/800–433–3823 (Formerly: Kroll Laboratory Specialists, Inc., Laboratory Specialists, Inc.)

Alere Toxicology Services, 450 Southlake Blvd., Richmond, VA 23236, 804–378–9130 (Formerly: Kroll Laboratory Specialists, Inc., Scientific Testing Laboratories, Inc.; Kroll Scientific Testing Laboratories, Inc.)

Baptist Medical Center-Toxicology Laboratory, 11401 I–30, Little Rock, AR 72209–7056, 501–202–2783 (Formerly: Forensic Toxicology Laboratory Baptist Medical Center)

Clinical Reference Lab, 8433 Quivira Road, Lenexa, KS 66215–2802, 800–445–6917

DrugScan, Inc., 200 Precision Road, Suite 200, Horsham, PA 19044, 800–235–4890

Dynacare*, 245 Pall Mall Street, London, ONT, Canada N6A 1P4, 519–679–1630 (Formerly: Gamma-Dynacare Medical Laboratories)

ElSohly Laboratories, Inc., 5 Industrial Park Drive, Oxford, MS 38655, 662–236–2609

Fortes Laboratories, Inc., 25749 SW Canyon Creek Road, Suite 600, Wilsonville, OR 97070, 503–486–1023

Laboratory Corporation of America Holdings, 7207 N. Gessner Road, Houston, TX 77040, 713–856–8288/800–800–2387

Laboratory Corporation of America Holdings, 69 First Ave., Raritan, NJ 08869, 908–526–2400/800–437–4986 (Formerly: Roche Biomedical Laboratories, Inc.)

Laboratory Corporation of America Holdings, 1904 Alexander Drive, Research Triangle Park, NC 27709, 919–572–6900/800–833–3984 (Formerly: LabCorp Occupational Testing Services, Inc., CompuChem Laboratories, Inc.; CompuChem Laboratories, Inc., A Subsidiary of Roche Biomedical Laboratory; Roche CompuChem Laboratories, Inc., A Member of the Roche Group)

Laboratory Corporation of America Holdings, 1120 Main Street, Southaven, MS 38671, 866–827–8042/800–233–6339 (Formerly: LabCorp Occupational Testing Services, Inc.; MedExpress/National Laboratory Center)

LabOne, Inc. d/b/a Quest Diagnostics, 10101 Renner Blvd., Lenexa, KS 66219, 913–888–3927/800–873–8845 (Formerly: Quest Diagnostics Incorporated; LabOne, Inc.; Center for Laboratory Services, a Division of LabOne, Inc.)

MedTox Laboratories, Inc., 402 W. County Road D, St. Paul, MN 55112, 651–636–7466/800–832–3244

MetroLab-Legacy Laboratory Services, 1225 NE 2nd Ave., Portland, OR 97232, 503–413–5295/800–950–5295

Minneapolis Veterans Affairs Medical Center, Forensic Toxicology Laboratory, 1 Veterans Drive, Minneapolis, MN 55417, 612–725–2088, Testing for Veterans Affairs (VA) Employees Only

National Toxicology Laboratories, Inc., 1100 California Ave., Bakersfield, CA 93304, 661–322–4250/800–350–3515

One Source Toxicology Laboratory, Inc., 1213 Genoa-Red Bluff, Pasadena, TX 77504, 888–747–3774 (Formerly: University of Texas Medical Branch, Clinical Chemistry Division; UTMB Pathology-Toxicology Laboratory)

Pacific Toxicology Laboratories, 9348 DeSoto Ave., Chatsworth, CA 91311, 800–328–6942 (Formerly: Centinela Hospital Airport Toxicology Laboratory)

Pathology Associates Medical Laboratories, 110 West Cliff Dr., Spokane, WA 99204, 509–755–8991/800–541–7891x7

Phamatech, Inc., 15175 Innovation Drive, San Diego, CA 92128, 888–635–5840

Quest Diagnostics Incorporated, 1777 Montreal Circle, Tucker, GA 30084, 800–729–6432 (Formerly: SmithKline Beecham Clinical Laboratories; SmithKline Bio-Science Laboratories)

Quest Diagnostics Incorporated, 400 Egypt Road, Norristown, PA 19403, 610–631–4600/877–642–2216 (Formerly: SmithKline Beecham Clinical Laboratories; SmithKline Bio-Science Laboratories)

Quest Diagnostics Incorporated, 8401 Fallbrook Ave., West Hills, CA 91304,

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* The Standards Council of Canada (SCC) voted to end its Laboratory Accreditation Program for Substance Abuse (LAPSA) effective May 12, 1998. Laboratories certified through that program were accredited to conduct forensic urine drug testing as required by U.S. Department of Transportation (DOT) regulations. As of that date, the certification of those accredited Canadian laboratories will continue under DOT authority. The responsibility for conducting quarterly performance testing plus periodic on-site inspections of those LAPSA-accredited laboratories was transferred to the U.S. HHS, with the HHS' NLCP contractor continuing to have an active role in the performance testing and laboratory inspection processes. Other Canadian laboratories wishing to be considered for the NLCP may apply directly to the NLCP contractor just as U.S. laboratories do.

Upon finding a Canadian laboratory to be qualified, HHS will recommend that DOT certify the laboratory (**Federal Register**, July 16, 1996) as meeting the minimum standards of the Mandatory Guidelines published in the **Federal Register** on April 30, 2010 (75 FR 22809). After receiving DOT certification, the laboratory will be included in the monthly list of HHS-certified laboratories and participate in the NLCP certification maintenance program.

818–737–6370 (Formerly: SmithKline Beecham Clinical Laboratories)
Redwood Toxicology Laboratory, 3700650 Westwind Blvd., Santa Rosa, CA 95403, 800–255–2159
Southwest Laboratories, 4625 E. Cotton Center Boulevard, Suite 177, Phoenix, AZ 85040, 602–438–8507/800–279–0027
STERLING Reference Laboratories, 2617 East L Street, Tacoma, Washington 98421, 800–442–0438
U.S. Army Forensic Toxicology Drug Testing Laboratory, 2490 Wilson St., Fort George G. Meade, MD 20755–5235, 301–677–7085, Testing for Department of Defense (DoD) Employees Only

Summer King,
Statistician.

[FR Doc. 2016–07466 Filed 4–1–16; 8:45 am]

BILLING CODE 4160–20–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

[Coast Guard–2016–0098]

Prince William Sound Regional Citizens' Advisory Council Charter Renewal

AGENCY: Coast Guard, DHS.

ACTION: Notice.

SUMMARY: The purpose of this notice is to inform the public that the Coast Guard has recertified the Prince William Sound Regional Citizens' Advisory Council (PWSRCAC) as an alternative voluntary advisory group for Prince William Sound, Alaska. This certification allows the PWSRCAC to monitor the activities of terminal facilities and crude oil tankers under the Prince William Sound Program established by statute.

DATES: This recertification is effective for the period from February 29, 2016 through February 28, 2017.

FOR FURTHER INFORMATION CONTACT: LT Patrick Grizzle, Seventeenth Coast Guard District (dpi), by phone at (907)463–2809, email patrick.j.grizzle@Coast Guard.mil or by mail at P.O. Box 25517, Juneau, Alaska 99802.

SUPPLEMENTARY INFORMATION:

Background and Purpose

As part of the Oil Pollution Act of 1990, Congress passed the Oil Terminal and Oil Tanker Environmental Oversight and Monitoring Act of 1990 (the Act), 33 U.S.C. 2732, to foster a long-term partnership among industry, government, and local communities in overseeing compliance with environmental concerns in the operation of crude oil terminals and oil tankers.

On October 18, 1991, the President delegated his authority under 33 U.S.C 2732(o) to the Secretary of Transportation in Executive Order 12777, section 8(g) (see 56 FR 54757; October 22, 1991) for purposes of certifying advisory councils, or groups, subject to the Act. On March 3, 1992, the Secretary redelegated that authority to the Commandant of the Coast Guard (see 57 FR 8582; March 11, 1992). The Commandant redelegated that authority to the Chief, Office of Marine Safety, Security and Environmental Protection (G–M) on March 19, 1992 (letter #5402).

On July 7, 1993, the Coast Guard published a policy statement, 58 FR 36504, to clarify the factors that shall be considered in making the determination as to whether advisory councils, or groups, should be certified in accordance with the Act.

The Assistant Commandant for Marine Safety and Environmental Protection (G–M), redelegated recertification authority for advisory councils, or groups, to the Commander, Seventeenth Coast Guard District on February 26, 1999 (letter #16450).

On September 16, 2002, the Coast Guard published a policy statement, 67 FR 58440, that changed the recertification procedures such that applicants are required to provide the Coast Guard with comprehensive information every three years (triennially). For each of the two years between the triennial application procedures, applicants submit a letter requesting recertification that includes a description of any substantive changes to the information provided at the previous triennial recertification. Further, public comment is not solicited prior to recertification during streamlined years, only during the triennial comprehensive review.

On March 1, 2003, the Coast Guard was transferred from the Department of Transportation (DoT) to the Department of Homeland Security (DHS) and retained the previous delegations that were provided while it was in the DoT.

The Alyeska Pipeline Service Company pays the PWSRCAC $2.9 million annually in the form of a longterm contract. In return for this funding, the PWSRCAC must annually show that it "fosters the goals and purposes" of OPA 90 and is "broadly representative of the communities and interests in the vicinity of the terminal facilities and Prince William Sound." The PWSRCAC is an independent, nonprofit organization founded in 1989. Though it receives federal oversight like many independent, non-profit organizations, it is not a federal agency. The PWSRCAC is a local organization that predates the passage of OPA 90. The existence of the PWSRCAC was specifically recognized in OPA 90 where it is defined as an "alternate voluntary advisory group."

Alyeska funds the PWSRCAC, and the Coast Guard makes sure the PWSRCRC operates in a fashion that is broadly consistent with OPA 90.

Recertification

By letter dated Feb. 29, 2016, the Commander, Seventeenth Coast Guard certified that the PWSRCAC qualifies as an alternative voluntary advisory group under 33 U.S.C. 2732(o). This recertification terminates on February 28, 2017.

Dated: February 29, 2016.

D.B. Abel,
Rear Admiral, U.S. Coast Guard Commander, Seventeenth Coast Guard District.

[FR Doc. 2016–07658 Filed 4–1–16; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

[1651–0085]

Agency Information Collection Activities: Administrative Rulings

AGENCY: U.S. Customs and Border Protection, Department of Homeland Security.

ACTION: 30-Day notice and request for comments; Extension of an existing collection of information.

SUMMARY: U.S. Customs and Border Protection (CBP) of the Department of Homeland Security will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act: Administrative Rulings. This is a proposed extension of an information collection that was previously approved. CBP is proposing that this information collection be extended with a change to the burden hours or to the information collected. This document is published to obtain comments from the public and affected agencies.

DATES: Written comments should be received on or before May 4, 2016 to be assured of consideration.

ADDRESSES: Interested persons are invited to submit written comments on this proposed information collection to the Office of Information and Regulatory Affairs, Office of Management and Budget. Comments should be addressed to the OMB Desk Officer for Customs and Border Protection, Department of Homeland Security, and sent via electronic mail to *oira_submission@omb.eop.gov* or faxed to (202) 395–5806.

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to Tracey Denning, U.S. Customs and Border Protection, Regulations and Rulings, Office of International Trade, 90 K Street NE., 10th Floor, Washington, DC 20229–1177, at 202–325–0265.

SUPPLEMENTARY INFORMATION: This proposed information collection was previously published in the **Federal Register** (81 FR 1959) on January 14, 2016, allowing for a 60-day comment period. This notice allows for an additional 30 days for public comments. This process is conducted in accordance with 5 CFR 1320.10. CBP invites the general public and other Federal agencies to comment on proposed and/or continuing information collections pursuant to the Paperwork Reduction Act of 1995 (Pub. L. 104–13; 44 U.S.C. 3507). The comments should address: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimates of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden, including the use of automated collection techniques or the use of other forms of information technology; and (e) the annual costs to respondents or record keepers from the collection of information (total capital/startup costs and operations and maintenance costs). The comments that are submitted will be summarized and included in the CBP request for OMB approval. All comments will become a matter of public record. In this document, CBP is soliciting comments concerning the following information collection:

Title: Administrative Rulings.

OMB Number: 1651–0085.

Abstract: The collection of information in 19 CFR part 177 is necessary in order to enable Customs and Border Protection (CBP) to respond to requests by importers and other interested persons for the issuance of administrative rulings. These rulings pertain to the interpretation of applicable laws related to prospective and current transactions involving classification, marking, and country of origin. The collection of information in Part 177 of the CBP Regulations is also necessary to enable CBP to make proper decisions regarding the issuance of binding rulings that modify or revoke prior CBP binding rulings. This collection of information is authorized by 19 U.S.C. 66, 1202, (General Note 3(i), Harmonized Tariff Schedule of the United States). The application to obtain an administrative ruling is accessible at: *https://apps.cbp.gov/erulings.*

Action: CBP proposes to extend the expiration date of this information collection with a change to the burden hours based on current estimates, but no change to the information collected.

Type of Review: Extension (with change).

Affected Public: Businesses.

Rulings

Estimated Number of Respondents: 3,000.

Estimated Time per Respondent: 10 hours.

Estimated Total Annual Burden Hours: 30,000.

Appeals

Estimated Number of Respondents: 200.

Estimated Time per Respondent: 40 hours.

Estimated Total Annual Burden Hours: 8,000.

Dated: March 30, 2016.

Tracey Denning,

Agency Clearance Officer, U.S. Customs and Border Protection.

[FR Doc. 2016–07590 Filed 4–1–16; 8:45 am]

BILLING CODE 9111–14–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket ID FEMA–2016–0002; Internal Agency Docket No. FEMA–B–1606]

Changes in Flood Hazard Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice lists communities where the addition or modification of Base Flood Elevations (BFEs), base flood depths, Special Flood Hazard Area (SFHA) boundaries or zone designations, or the regulatory floodway (hereinafter referred to as flood hazard determinations), as shown on the Flood Insurance Rate Maps (FIRMs), and where applicable, in the supporting Flood Insurance Study (FIS) reports, prepared by the Federal Emergency Management Agency (FEMA) for each community, is appropriate because of new scientific or technical data. The FIRM, and where applicable, portions of the FIS report, have been revised to reflect these flood hazard determinations through issuance of a Letter of Map Revision (LOMR), in accordance with Title 44, part 65 of the Code of Federal Regulations (44 CFR part 65). The LOMR will be used by insurance agents and others to calculate appropriate flood insurance premium rates for new buildings and the contents of those buildings. For rating purposes, the currently effective community number is shown in the table below and must be used for all new policies and renewals.

DATES: These flood hazard determinations will become effective on the dates listed in the table below and revise the FIRM panels and FIS report in effect prior to this determination for the listed communities.

From the date of the second publication of notification of these changes in a newspaper of local circulation, any person has 90 days in which to request through the community that the Deputy Associate Administrator for Mitigation reconsider the changes. The flood hazard determination information may be changed during the 90-day period.

ADDRESSES: The affected communities are listed in the table below. Revised flood hazard information for each community is available for inspection at both the online location and the respective community map repository address listed in the table below. Additionally, the current effective FIRM and FIS report for each community are accessible online through the FEMA Map Service Center at *www.msc.fema.gov* for comparison.

Submit comments and/or appeals to the Chief Executive Officer of the community as listed in the table below.

FOR FURTHER INFORMATION CONTACT: Luis Rodriguez, Chief, Engineering Management Branch, Federal Insurance and Mitigation Administration, FEMA, 500 C Street SW., Washington, DC 20472, (202) 646–4064, or (email) *Luis.Rodriguez3@fema.dhs.gov;* or visit the FEMA Map Information eXchange (FMIX) online at *www.floodmaps.fema.gov/fhm/fmx_main.html.*

SUPPLEMENTARY INFORMATION: The specific flood hazard determinations are not described for each community in this notice. However, the online location and local community map repository address where the flood hazard determination information is available for inspection is provided.

Any request for reconsideration of flood hazard determinations must be submitted to the Chief Executive Officer of the community as listed in the table below.

The modifications are made pursuant to section 201 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and are in accordance with the National Flood Insurance Act of 1968, 42 U.S.C. 4001 *et seq.*, and with 44 CFR part 65.

The FIRM and FIS report are the basis of the floodplain management measures that the community is required either to adopt or to show evidence of having in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

These flood hazard determinations, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own or pursuant to policies established by other Federal, State, or regional entities. The flood hazard determinations are in accordance with 44 CFR 65.4.

The affected communities are listed in the following table. Flood hazard determination information for each community is available for inspection at both the online location and the respective community map repository address listed in the table below. Additionally, the current effective FIRM and FIS report for each community are accessible online through the FEMA Map Service Center at *www.msc.fema.gov* for comparison.

(Catalog of Federal Domestic Assistance No. 97.022, "Flood Insurance.")

Dated: March 20, 2016.

Roy E. Wright,

Deputy Associate Administrator for Insurance and Mitigation, Department of Homeland Security, Federal Emergency Management Agency.

State and county	Location and case No.	Chief executive officer of community	Community map repository	Online location of letter of map revision	Effective date of modification	Community No.
Idaho:						
Ada	Unincorporated areas of Ada County (16–10–0201X).	The Honorable Dave Case, District Commissioner, Ada County, 200 West Front Street, 3rd Floor, Boise, ID 83702.	County Courthouse, 200 West Front Street, 3rd Floor, Boise, ID 83702.	*http://www.msc.fema.gov/lomc*	Apr. 15, 2016	160001
Valley	City of Donnelly (16–10–0166P).	The Honorable Bradley Backus, Mayor, City of Donnelly, 169 Halferty Street, Donnelly, ID 83615.	City Hall, 169 Halferty Street, Donnelly, ID 83615.	*http://www.msc.fema.gov/lomc*	Apr. 22, 2016	160121
Valley	Unincorporated areas of Valley County (16–10–0166P).	The Honorable Gordon Cruickshank, Chairman, Valley County Board of Commissioners, 219 North Main Street, Cascade, ID 83611.	Valley County Planning and Zoning Department, 219 North Main Street, Cascade, ID 83611.	*http://www.msc.fema.gov/lomc*	Apr. 22, 2016	160220
Illinois:						
Sangamon	City of Springfield (15–05–8063X).	The Honorable James O. Langfelder, Mayor, City of Springfield, 800 East Monroe Street, Springfield, IL 62701.	Public Works Department, 300 South 7th Street, Room 203, Springfield, IL 62701.	*http://www.msc.fema.gov/lomc*	May 5, 2016	170604
Sangamon	Unincorporated areas of Sangamon County (15–05–8063X).	The Honorable Andy Van Meter, Sangamon County Chairman, 200 South 9th Street, Room 201, Springfield, IL 62701.	Springfield—Sangamon County, Regional Planning Commission, 200 South 9th Street, Room 212, Springfield, IL 62701.	*http://www.msc.fema.gov/lomc*	May 5, 2016	170912
Indiana:						
Decatur	City of Greensburg (15–05–5745P).	The Honorable Gary L. Herbert, Mayor, City of Greensburg, 314 West Washington Street, Greensburg, IN 47240.	City Hall, 314 West Washington Street, Greensburg, IN 47240.	*http://www.msc.fema.gov/lomc*	Apr. 27, 2016	180043
Decatur	Unincorporated areas of Decatur County (15–05–5745P).	Mr. Rick J. Nobbe, Chairman, Decatur County Board of Commissioners, 150 Courthouse Square, Suite 133, Greensburg, IN 47240.	Decatur County Planning and Zoning Department, Decatur County Courthouse, 150 Courthouse Square, Suite 117, Greensburg, IN 47240.	*http://www.msc.fema.gov/lomc*	Apr. 27, 2016	180430
Kansas:						
Sedgwick	City of Wichita (15–07–0922P).	The Honorable Carl Brewer, Mayor, City of Wichita, City Hall, 455 North Main Street, 1st Floor, Wichita, KS 67202.	Office of Stormwater Management, 455 North Main Street, 8th Floor, Wichita, KS 67202.	*http://www.msc.fema.gov/lomc*	Apr. 26, 2016	200328
Sedgwick	Unincorporated areas of Sedgwick County (15–07–0922P).	The Honorable Richard Ranzau, Chairman, Sedgwick County Commission, 525 North Main Street, No. 320, Wichita, KS 67203.	Sedgwick County Code Enforcement Office, 144 South Seneca Street, Wichita, KS 67213.	*http://www.msc.fema.gov/lomc*	Apr. 26, 2016	200321
Massachusetts:						

State and county	Location and case No.	Chief executive officer of community	Community map repository	Online location of letter of map revision	Effective date of modification	Community No.
Middlesex	City of Cambridge (15–01–2142P).	The Honorable David P. Maher, Mayor, City of Cambridge, 495 Massachusetts Avenue, Cambridge, MA 02139.	City Hall, 495 Massachusetts Avenue, Cambridge, MA 02139.	*http://www.msc.fema.gov/lomc*	Apr. 8, 2016	250186
Middlesex	Town of Arlington (15–01–2142P).	Mr. Kevin F. Greeley, Chairman, Town of Arlington, Board of Selectmen, 730 Massachusetts Avenue, Arlington, MA 02476.	Planning and Community Development Department, 730 Massachusetts Avenue Annex, Arlington, MA 02476.	*http://www.msc.fema.gov/lomc*	Apr. 8, 2016	250177
Middlesex	Town of Belmont (15–01–2142P).	Mr. Sami S. Baghdady, Chairman, Town of Belmont Board of Selectmen, 455 Concord Avenue, Belmont, MA 02478.	Public Works Department, 455 Concord Avenue, Belmont, MA 02478.	*http://www.msc.fema.gov/lomc*	Apr. 8, 2016	250182
Michigan: Macomb	Charter Township of Washington (15–05–6512P).	Mr. Dan O'Leary, Township Supervisor, Charter Township of Washington, 57900 Van Dyke Road, Washington, MI 48094.	Planning and Zoning Department, 57900 Van Dyke Road, Washington, MI 48094.	*http://www.msc.fema.gov/lomc*	Mar. 18, 2016	260447
Macomb	Township of Macomb (16–05–0488P).	Ms. Janet Dunn, Supervisor, Township of Macomb, 54111 Broughton Road, Macomb, MI 48042.	Planning and Zoning Department, 54111 Broughton Road, Macomb, MI 48042.	*http://www.msc.fema.gov/lomc*	Apr. 19, 2016	260445
Minnesota: Cottonwood	City of Windom (15–05–5228P).	The Honorable Corey Maricle, Mayor, City of Windom, 444 9th Street, P.O. Box 38, Windom, MN 56101.	City Hall, 444 9th Street, Windom, MN 56101.	*http://www.msc.fema.gov/lomc*	Mar. 17, 2016	270090
New York: Monroe	Town of Henrietta (15–02–1216P).	The Honorable Jack W. Moore, Supervisor, Town of Henrietta, 475 Calkins Road, Henrietta, NY 14467.	Town Hall, 475 Calkins Road, Henrietta, NY 14467.	*http://www.msc.fema.gov/lomc*	Apr. 5, 2016	360419
Pennsylvania: Monroe	Borough of East Stroudsburg (15–03–2847P).	The Honorable Armand M. Martinelli, Mayor, Borough of East Stroudsburg, 24 Analomink Street, P.O. Box 303, East Stroudsburg, PA 18301.	Borough Hall, 24 Analomink Street, East Stroudsburg, PA 18301.	*http://www.msc.fema.gov/lomc*	Apr. 26, 2016	420691
Monroe	Borough of Stroudsburg (15–03–2847P).	Ms. Kim M. Diddio, President, Borough of Stroudsburg Council, 700 Sarah Street, Stroudsburg, PA 18360.	Stroudsburg Municipal Building, 700 Sarah Street, Stroudsburg, PA 18360.	*http://www.msc.fema.gov/lomc*	Apr. 26, 2016	420694
Monroe	Township of Stroud (15–03–2847P).	Mr. Edward C. Cramer, Chairman, Township of Stroud Board of Supervisors, 1211 North 5th Street, Stroudsburg, PA18360.	Stroud Township Municipal Building, 1211 North 5th Street, Stroudsburg, PA 18360.	*http://www.msc.fema.gov/lomc*	Apr. 26, 2016	420693
South Carolina: Greenville	City of Greenville (15–04–4735P).	The Honorable Knox White, Mayor, City of Greenville, 206 South Main Street, P.O. Box 2207, Greenville, SC 29601.	City Hall, 206 South Main Street, Greenville, SC 29601.	*http://www.msc.fema.gov/lomc*	Apr. 25, 2016	450091
Texas: Collin	City of Dallas (15–06–3975P).	The Honorable Michael S. Rawlings, Mayor, City of Dallas, 1500 Marilla Street, Room 5EN, Dallas, TX 75201.	City Hall, 320 East Jefferson Boulevard, Room 321, Dallas, TX 75203.	*http://www.msc.fema.gov/lomc*	Apr. 15, 2016	480171
Tarrant	City of Fort Worth (15–06–2415P).	The Honorable Betsy Price, Mayor, City of Fort Worth, 1000 Throckmorton Street, Fort Worth, TX 76102.	City Hall, 1000 Throckmorton Street, Fort Worth, TX 76102.	*http://www.msc.fema.gov/lomc*	Apr. 13, 2016	480596
Virginia: Pittsylvania	City of Danville (15–03–1839P).	The Honorable Sherman Saunders, Mayor, City of Danville, 115 Druid Lane, Danville, VA 24541.	City Hall, 427 Patton Street, Danville, VA 24541.	*http://www.msc.fema.gov/lomc*	Mar. 25, 2016	510044
Washington:						

State and county	Location and case No.	Chief executive officer of community	Community map repository	Online location of letter of map revision	Effective date of modification	Community No.
King	City of Bellevue (15–10–0979P).	Mr. Brad Miyake, City Manager, City of Bellevue, 450 110th Avenue Northeast, Bellevue, WA 98009.	City Hall, 450 110th Avenue Northeast, Bellevue, WA 98009.	*http://www.msc.fema.gov/lomc*	Mar. 15, 2016	530074
Spokane	City of Spokane Valley (15–10–1394P).	The Honorable David A. Condon, Mayor, City of Spokane Valley, 808 West Spokane Falls Boulevard, Spokane Valley, WA 99201.	City Hall, 11707 East Sprague Avenue, Suite 106, Spokane Valley, WA 99203.	*http://www.msc.fema.gov/lomc*	Mar. 18, 2016	530342
Wisconsin: St. Croix	Unincorporated areas of St. Croix County (15–05–3808P).	The Honorable Roger Larson, Chairman, St. Croix County Board of Supervisors, 1101 Carmichael Road, Hudson, WI 54016.	St. Croix County, County Office Building, 1101 Carmichael Road, Hudson, WI 54016.	*http://www.msc.fema.gov/lomc*	Apr. 1, 2016	555578

[FR Doc. 2016–07505 Filed 4–1–16; 8:45 am]

BILLING CODE 9110–12–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–3375–EM; Docket ID FEMA–2016–0001]

Michigan; Amendment No. 1 to Notice of an Emergency Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of an emergency for the State of Michigan (FEMA–3375–EM), dated January 16, 2016, and related determinations.

DATES: *Effective Date:* March 25, 2016.

FOR FURTHER INFORMATION CONTACT: Dean Webster, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW., Washington, DC 20472, (202) 646–2833.

SUPPLEMENTARY INFORMATION: Notice is hereby given that the emergency assistance being provided under this emergency declaration is extended to August 14, 2016.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

W. Craig Fugate,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2016–07598 Filed 4–1–16; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–4267–DR; Docket ID FEMA–2016–0001]

Pennsylvania; Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the Commonwealth of Pennsylvania (FEMA–4267–DR), dated March 23, 2016, and related determinations.

DATES: *Effective Date:* March 23, 2016.

FOR FURTHER INFORMATION CONTACT: Dean Webster, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW., Washington, DC 20472, (202) 646–2833.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated March 23, 2016, the President issued a major disaster declaration under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (the "Stafford Act"), as follows:

I have determined that the damage in certain areas of the Commonwealth of Pennsylvania resulting from a severe winter storm and snowstorm during the period of January 22–23, 2016, is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (the "Stafford Act"). Therefore, I declare that such a major disaster exists in the Commonwealth of Pennsylvania.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Public Assistance in the designated areas and Hazard Mitigation throughout the Commonwealth. You are further authorized to provide snow assistance under the Public Assistance program for a limited period of time during or proximate to the incident period. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Hazard Mitigation will be limited to 75 percent of the total eligible costs. Federal funds provided under the Stafford Act for Public Assistance also will be limited to 75 percent of the total eligible costs, with the exception of projects that meet the eligibility criteria for a higher Federal cost-sharing percentage under the Public Assistance Alternative Procedures Pilot Program for Debris Removal implemented pursuant to section 428 of the Stafford Act.

Further, you are authorized to make changes to this declaration for the approved assistance to the extent allowable under the Stafford Act.

The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Administrator, under Executive Order 12148, as amended, Donald L. Keldsen, of FEMA is appointed to act as the Federal Coordinating Officer for this major disaster.

The following areas of the Commonwealth of Pennsylvania have been designated as adversely affected by this major disaster:

Adams, Bedford, Berks, Blair, Bucks, Chester, Cumberland, Dauphin, Fayette, Franklin, Fulton, Juniata, Lancaster, Lebanon, Lehigh, Montgomery, Northampton, Perry, Philadelphia, Schuylkill, Somerset, Westmoreland, and York Counties for Public Assistance.

Adams, Bedford, Berks, Blair, Bucks, Chester, Cumberland, Dauphin, Fayette, Franklin, Fulton, Juniata, Lancaster, Lebanon, Lehigh, Montgomery, Northampton, Perry, Philadelphia, Schuylkill, Somerset, Westmoreland, and York Counties for snow assistance under the Public Assistance program for any continuous 48-hour period during or proximate the incident period.

All areas within the Commonwealth of Pennsylvania are eligible for assistance under the Hazard Mitigation Grant Program.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

W. Craig Fugate,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2016–07509 Filed 4–1–16; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket ID FEMA–2016–0002]

Final Flood Hazard Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Final notice.

SUMMARY: Flood hazard determinations, which may include additions or modifications of Base Flood Elevations (BFEs), base flood depths, Special Flood Hazard Area (SFHA) boundaries or zone designations, or regulatory floodways on the Flood Insurance Rate Maps (FIRMs) and where applicable, in the supporting Flood Insurance Study (FIS) reports have been made final for the communities listed in the table below.

The FIRM and FIS report are the basis of the floodplain management measures that a community is required either to adopt or to show evidence of having in effect in order to qualify or remain qualified for participation in the Federal Emergency Management Agency's (FEMA's) National Flood Insurance Program (NFIP). In addition, the FIRM and FIS report are used by insurance agents and others to calculate appropriate flood insurance premium rates for buildings and the contents of those buildings.

DATES: The effective date of July 20, 2016 which has been established for the FIRM and, where applicable, the supporting FIS report showing the new or modified flood hazard information for each community.

ADDRESSES: The FIRM, and if applicable, the FIS report containing the final flood hazard information for each community is available for inspection at the respective Community Map Repository address listed in the tables below and will be available online through the FEMA Map Service Center at *www.msc.fema.gov* by the effective date indicated above.

FOR FURTHER INFORMATION CONTACT: Luis Rodriguez, Chief, Engineering Management Branch, Federal Insurance and Mitigation Administration, FEMA, 500 C Street SW., Washington, DC 20472, (202) 646–4064, or (email) *Luis.Rodriguez3@fema.dhs.gov;* or visit the FEMA Map Information eXchange (FMIX) online at *www.floodmaps.fema.gov/fhm/fmx_main.html.*

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency (FEMA) makes the final determinations listed below for the new or modified flood hazard information for each community listed. Notification of these changes has been published in newspapers of local circulation and 90 days have elapsed since that publication. The Deputy Associate Administrator for Mitigation has resolved any appeals resulting from this notification.

This final notice is issued in accordance with section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR part 67. FEMA has developed criteria for floodplain management in floodprone areas in accordance with 44 CFR part 60.

Interested lessees and owners of real property are encouraged to review the new or revised FIRM and FIS report available at the address cited below for each community or online through the FEMA Map Service Center at *www.msc.fema.gov.*

The flood hazard determinations are made final in the watersheds and/or communities listed in the table below.

(Catalog of Federal Domestic Assistance No. 97.022, "Flood Insurance.")

Dated: March 4, 2016.

Roy E. Wright,

Deputy Associate Administrator for Insurance and Mitigation, Department of Homeland Security, Federal Emergency Management Agency.

I. Non-watershed-based studies:

Community	Community map repository address
Trinity County, California, and Incorporated Areas Docket No.: FEMA–B–1511	
Unincorporated Areas of Trinity County	Planning Department & Planning Commission, 61 Airport Road, Weaverville, CA 96093.
Marion County, Missouri, and Incorporated Areas Docket No.: B–1511	
Unincorporated Areas of Marion County	County Courthouse, 100 South Main Street, Palmyra, MO 63461.
Mercer County, New Jersey, and Incorporated Areas Docket No.: FEMA–B–1359	
Borough of Hightstown	Clerk's Office, 156 Bank Street, Hightstown, NJ 08520.
Borough of Hopewell	Clerk's Office, 88 Broad Street, Hopewell, NJ 08525.
Borough of Pennington	Borough Hall, 30 North Main Street, Pennington, NJ 08534.
City of Trenton	Trenton Fire Department, 244 Perry Street, Trenton, NJ 08618.
Municipality of Princeton	Office of Engineering, 400 Witherspoon Street, Princeton, NJ 08540.
Township of East Windsor	Engineering Department, 16 Lanning Boulevard, East Windsor, NJ 08520.
Township of Ewing	Construction Office, 2 Jake Garzio Drive, Ewing, NJ 08628.

Community	Community map repository address
Township of Hamilton	Municipal Building, 2090 Greenwood Avenue Room 307, Hamilton, NJ 08609.
Township of Hopewell	Hopewell Township Zoning Office, 201 Washington Crossing Pennington Road, Titusville, NJ 08560.
Township of Lawrence	Engineering Office, 2207 Lawrence Road, 40, Lawrence, NJ 08648.
Township of Robbinsville	Planning and Zoning Department, 1 Washington Boulevard, Robbinsville, NJ 08691.
Township of West Windsor	Community Development Department, 271 Clarksville Road, West Windsor, NJ 08550.

[FR Doc. 2016–07595 Filed 4–1–16; 8:45 am]

BILLING CODE 9110–12–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket ID FEMA–2016–0002; Internal Agency Docket No. FEMA–B–1601]

Proposed Flood Hazard Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: Comments are requested on proposed flood hazard determinations, which may include additions or modifications of any Base Flood Elevation (BFE), base flood depth, Special Flood Hazard Area (SFHA) boundary or zone designation, or regulatory floodway on the Flood Insurance Rate Maps (FIRMs), and where applicable, in the supporting Flood Insurance Study (FIS) reports for the communities listed in the table below. The purpose of this notice is to seek general information and comment regarding the preliminary FIRM, and where applicable, the FIS report that the Federal Emergency Management Agency (FEMA) has provided to the affected communities. The FIRM and FIS report are the basis of the floodplain management measures that the community is required either to adopt or to show evidence of having in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP). In addition, the FIRM and FIS report, once effective, will be used by insurance agents and others to calculate appropriate flood insurance premium rates for new buildings and the contents of those buildings.

DATES: Comments are to be submitted on or before July 5, 2016.

ADDRESSES: The Preliminary FIRM, and where applicable, the FIS report for each community are available for inspection at both the online location and the respective Community Map Repository address listed in the tables below. Additionally, the current effective FIRM and FIS report for each community are accessible online through the FEMA Map Service Center at *www.msc.fema.gov* for comparison.

You may submit comments, identified by Docket No. FEMA–B–1601, to Luis Rodriguez, Chief, Engineering Management Branch, Federal Insurance and Mitigation Administration, FEMA, 500 C Street SW., Washington, DC 20472, (202) 646–4064, or (email) *Luis.Rodriguez3@fema.dhs.gov.*

FOR FURTHER INFORMATION CONTACT: Luis Rodriguez, Chief, Engineering Management Branch, Federal Insurance and Mitigation Administration, FEMA, 500 C Street SW., Washington, DC 20472, (202) 646–4064, or (email) *Luis.Rodriguez3@fema.dhs.gov;* or visit the FEMA Map Information eXchange (FMIX) online at *www.floodmaps.fema.gov/fhm/fmx_main.html.*

SUPPLEMENTARY INFORMATION: FEMA proposes to make flood hazard determinations for each community listed below, in accordance with section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR 67.4(a).

These proposed flood hazard determinations, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own or pursuant to policies established by other Federal, State, or regional entities. These flood hazard determinations are used to meet the floodplain management requirements of the NFIP and also are used to calculate the appropriate flood insurance premium rates for new buildings built after the FIRM and FIS report become effective.

The communities affected by the flood hazard determinations are provided in the tables below. Any request for reconsideration of the revised flood hazard information shown on the Preliminary FIRM and FIS report that satisfies the data requirements outlined in 44 CFR 67.6(b) is considered an appeal. Comments unrelated to the flood hazard determinations also will be considered before the FIRM and FIS report become effective.

Use of a Scientific Resolution Panel (SRP) is available to communities in support of the appeal resolution process. SRPs are independent panels of experts in hydrology, hydraulics, and other pertinent sciences established to review conflicting scientific and technical data and provide recommendations for resolution. Use of the SRP only may be exercised after FEMA and local communities have been engaged in a collaborative consultation process for at least 60 days without a mutually acceptable resolution of an appeal. Additional information regarding the SRP process can be found online at *http://floodsrp.org/pdfs/srp_fact_sheet.pdf.*

The watersheds and/or communities affected are listed in the tables below. The Preliminary FIRM, and where applicable, FIS report for each community are available for inspection at both the online location and the respective Community Map Repository address listed in the tables. For communities with multiple ongoing Preliminary studies, the studies can be identified by the unique project number and Preliminary FIRM date listed in the tables. Additionally, the current effective FIRM and FIS report for each community are accessible online through the FEMA Map Service Center at *www.msc.fema.gov* for comparison.

(Catalog of Federal Domestic Assistance No. 97.022, "Flood Insurance.")

Dated: March 20, 2016.

Roy E. Wright,

Deputy Associate Administrator for Insurance and Mitigation, Department of Homeland Security, Federal Emergency Management Agency.

I. Watershed-based studies:

Community	Community map repository address
San Bernard Watershed	
Maps Available for Inspection Online at: *http://www.fema.gov/preliminaryfloodhazarddata*	
Fort Bend County, Texas, and Incorporated Areas	
City of Kendleton	City Hall, 430 Farm Market 2919, Kendleton, TX 77451.
Unincorporated Areas of Fort Bend County	Fort Bend County Drainage District, 1124 Blume Road, Rosenberg, TX 77471.
Wharton County, Texas, and Incorporated Areas	
City of East Bernard	City Hall, 704 Church Street, East Bernard, TX 77435.
City of Wharton	City Hall, 120 East Caney Street, Wharton, TX 77488.
Unincorporated Areas of Wharton County	Wharton County Annex, 315 East Milam Street, Suite 102, Wharton, TX 77488.

II. Non-watershed-based studies:

Community	Community map repository address
Boulder County, Colorado, and Incorporated Areas	
Maps Available for Inspection Online at: *http://www.fema.gov/preliminaryfloodhazarddata*	
Project: 15–08–0076S Preliminary Date: July 23, 2015	
City of Boulder	Municipal Building Plaza, 1777 Broadway, Boulder, CO 80302.
Unincorporated Areas of Boulder County	Boulder County Transportation Department, 2525 13th Street, Suite 203, Boulder, CO 80304.
El Paso County, Colorado, and Incorporated Areas	
Maps Available for Inspection Online at: *http://www.fema.gov/preliminaryfloodhazarddata*	
Project: 07–08–0392S Preliminary Date: July 29, 2015	
City of Colorado Springs	City Administration, 30 South Nevada Avenue, Colorado Springs, CO 80903.
City of Fountain	City Hall, 116 South Main Street, Fountain, CO 80817.
City of Manitou Springs	City Hall, 606 Manitou Avenue, Manitou Springs, CO 80829.
Town of Calhan	Town Hall, 556 Colorado Avenue, Calhan, CO 80808.
Town of Green Mountain Falls	Town Hall, 10615 Unit B Green Mountain Falls Road, Green Mountain Falls, CO 80819.
Town of Monument	Town Hall, 645 Beacon Lite Road, Monument, CO 80132.
Town of Palmer Lake	Town Hall, 42 Valley Crescent Street, Palmer Lake, CO 80133.
Town of Ramah	Town Hall, 113 South Commercial Street, Ramah, CO 80832.
Unincorporated Areas of El Paso County	Pikes Peak Regional Building Department, 2880 International Circle, Colorado Springs, CO 80910.
Summit County, Colorado, and Incorporated Areas	
Maps Available for Inspection Online at: *http://www.fema.gov/preliminaryfloodhazarddata*	
Project: 13–08–0037S Preliminary Date: June 25, 2015	
Town of Blue River	Town Hall, 0110 Whispering Pines Circle, Blue River, CO 80424.
Town of Breckenridge	Town Hall, 150 Ski Hill Road, Breckenridge, CO 80424.
Town of Frisco	Town Hall, One Main Street, Frisco, CO 80443.
Town of Silverthorne	Town Hall, 601 Center Circle, Silverthorne, CO 80498.
Unincorporated Areas of Summit County	Frisco Commons Building, 0037 Peak One Drive, Frisco, CO 80443.
Allegany County, Maryland, and Incorporated Areas	
Maps Available for Inspection Online at: *http://www.fema.gov/preliminaryfloodhazarddata*	
Project: 09–03–0015S Preliminary Date: September 30, 2015	
City of Cumberland	City Hall, 57 North Liberty Street, Cumberland, MD 21502.
City of Frostburg	City Hall, 59 East Main Street, Frostburg, MD 21532.
Town of Barton	Town Hall, 19018 Legislative Road SW, Barton, MD 21521.
Town of Lonaconing	Town Hall, Seven Jackson Street, Lonaconing, MD 21539.
Town of Luke	City Building, 510 Grant Street, Luke, MD 21540.

Community	Community map repository address
Town of Midland	Town Hall, 19823 Big Lane SW, Midland, MD 21532.
Town of Westernport	City Building, 107 Washington Street, Westernport, MD 21562.
Unincorporated Areas of Allegany County	County Office Building, 701 Kelly Road, Cumberland, MD 21502.
Erie County, Pennsylvania (All Jurisdictions)	
Maps Available for Inspection Online at: *http://www.fema.gov/preliminaryfloodhazarddata*	
Project: 13–03–0299S Preliminary Date: December 18, 2015	
Borough of Lake City	Borough Building, 2350 Main Street, Lake City, PA 16423.
City of Erie	Mayor's Office, 626 State Street, Room 500, Erie, PA 16501.
Township of Fairview	Township Building, 7471 McCray Road, Fairview, PA 16415.
Township of Girard	Township Building, 10140 Ridge Road, Girard, PA 16417.
Township of Harborcreek	Township Building, 5601 Buffalo Road, Harborcreek, PA 16421.
Township of Lawrence Park	Lawrence Park Township Building, 4230 Iroquois Avenue, Erie, PA 16511.
Township of Millcreek	Millcreek Township Municipal Building, 3608 West 26th Street, Erie, PA 16506.
Township of North East	Township Building, 10300 West Main Street, North East, PA 16428.
Township of Springfield	Springfield Township Building, 13300 Ridge Road, West Springfield, PA 16443.
Dorchester County, South Carolina, and Incorporated Areas	
Maps Available for Inspection Online at: *http://www.fema.gov/preliminaryfloodhazarddata*	
Project: MICS–18447 Preliminary Date: November 13, 2015	
Town of Summerville	Engineering Department, 200 South Main Street, Summerville, SC 29483.
Wharton County, Texas, and Incorporated Areas	
Maps Available for Inspection Online at: *http://www.fema.gov/preliminaryfloodhazarddata*	
Project: 14–06–1566S Preliminary Date: August 21, 2015	
City of East Bernard	City Hall, 704 Church Street, East Bernard, TX 77435.
City of Wharton	City Hall, 120 East Caney Street, Wharton, TX 77488.
Unincorporated Areas of Wharton County	Wharton County Annex, 315 East Milam Street, Suite 102, Wharton, TX 77488.

[FR Doc. 2016–07494 Filed 4–1–16; 8:45 am]

BILLING CODE 9110–12–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket ID FEMA–2016–0002; Internal Agency Docket No. FEMA–B–1611]

Changes in Flood Hazard Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice lists communities where the addition or modification of Base Flood Elevations (BFEs), base flood depths, Special Flood Hazard Area (SFHA) boundaries or zone designations, or the regulatory floodway (hereinafter referred to as flood hazard determinations), as shown on the Flood Insurance Rate Maps (FIRMs), and where applicable, in the supporting Flood Insurance Study (FIS) reports, prepared by the Federal Emergency Management Agency (FEMA) for each community, is appropriate because of new scientific or technical data. The FIRM, and where applicable, portions of the FIS report, have been revised to reflect these flood hazard determinations through issuance of a Letter of Map Revision (LOMR), in accordance with Title 44, Part 65 of the Code of Federal Regulations (44 CFR part 65). The LOMR will be used by insurance agents and others to calculate appropriate flood insurance premium rates for new buildings and the contents of those buildings. For rating purposes, the currently effective community number is shown in the table below and must be used for all new policies and renewals.

DATES: These flood hazard determinations will become effective on the dates listed in the table below and revise the FIRM panels and FIS report in effect prior to this determination for the listed communities.

From the date of the second publication of notification of these changes in a newspaper of local circulation, any person has 90 days in which to request through the community that the Deputy Associate Administrator for Mitigation reconsider the changes. The flood hazard determination information may be changed during the 90-day period.

ADDRESSES: The affected communities are listed in the table below. Revised flood hazard information for each community is available for inspection at both the online location and the respective community map repository address listed in the table below. Additionally, the current effective FIRM and FIS report for each community are accessible online through the FEMA Map Service Center at *www.msc.fema.gov* for comparison.

Submit comments and/or appeals to the Chief Executive Officer of the community as listed in the table below.

FOR FURTHER INFORMATION CONTACT: Luis Rodriguez, Chief, Engineering Management Branch, Federal Insurance and Mitigation Administration, FEMA, 500 C Street SW., Washington, DC 20472, (202) 646–4064, or (email) *Luis.Rodriguez3@fema.dhs.gov;* or visit the FEMA Map Information eXchange (FMIX) online at *www.floodmaps.fema.gov/fhm/fmx_main.html.*

SUPPLEMENTARY INFORMATION: The specific flood hazard determinations are not described for each community in this notice. However, the online location and local community map repository address where the flood hazard determination information is available for inspection is provided.

Any request for reconsideration of flood hazard determinations must be submitted to the Chief Executive Officer of the community as listed in the table below.

The modifications are made pursuant to section 201 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and are in accordance with the National Flood Insurance Act of 1968, 42 U.S.C. 4001 *et seq.*, and with 44 CFR part 65.

The FIRM and FIS report are the basis of the floodplain management measures that the community is required either to adopt or to show evidence of having in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

These flood hazard determinations, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own or pursuant to policies established by other Federal, State, or regional entities. The flood hazard determinations are in accordance with 44 CFR 65.4.

The affected communities are listed in the following table. Flood hazard determination information for each community is available for inspection at both the online location and the respective community map repository address listed in the table below. Additionally, the current effective FIRM and FIS report for each community are accessible online through the FEMA Map Service Center at *www.msc.fema.gov* for comparison.

(Catalog of Federal Domestic Assistance No. 97.022, "Flood Insurance.")

Dated: March 20, 2016.

Roy E. Wright,

Deputy Associate Administrator for Insurance and Mitigation, Department of Homeland Security, Federal Emergency Management Agency.

State and county	Location and case No.	Chief executive officer of community	Community map repository	Online location of letter of map revision	Effective date of modification	Community No.
Alabama:						
Shelby	City of Hoover (15–04–7711P).	The Honorable Gary Ivey, Mayor, City of Hoover, 100 Municipal Lane, Hoover, AL 35216.	Building Inspections Department, 2020 Valleydale Road, Hoover, AL 35244.	*http://www.msc.fema.gov/lomc.*	Jun. 13, 2016	010123
Shelby	Unincorporated areas of Shelby County (15–04–7711P).	The Honorable Rick Shepherd, Chairman, Shelby County Commission, 200 West College Street, Columbiana, AL 35051.	Shelby County Engineer's Office, 506 Highway 70, Columbiana, AL 35051.	*http://www.msc.fema.gov/lomc.*	Jun. 13, 2016	010191
Arizona: Maricopa	City of Scottsdale (15–09–1857P).	The Honorable W.J. "Jim" Lane, Mayor, City of Scottsdale, 3939 North Drinkwater Boulevard, Scottsdale, AZ 85251.	Stormwater and Floodplain Management Department, 7447 East Indian School Road, Suite 125, Scottsdale, AZ 85251.	*http://www.msc.fema.gov/lomc.*	Jun. 10, 2016	045012
California: Santa Barbara.	City of Santa Barbara (15–09–1420P).	The Honorable Helene Schneider, Mayor, City of Santa Barbara, P.O. Box 1990, Santa Barbara, CA 93102.	Public Works Department, 630 Garden Street, Santa Barbara, CA 93101.	*http://www.msc.fema.gov/lomc.*	Jun. 13, 2016	060335
Colorado: Arapahoe.	City of Aurora (15–08–1386P).	The Honorable Steve Hogan, Mayor, City of Aurora, 15151 East Alameda Parkway, Aurora, CO 80012.	City Hall, 15151 East Alameda Parkway, Aurora, CO 80012.	*http://www.msc.fema.gov/lomc.*	Jun. 10, 2016	080002
Connecticut: Hartford.	Town of Simsbury (15–01–2526P).	The Honorable Lisa L. Heavner, First Selectman, Town of Simsbury, 933 Hopmeadow Street, Simsbury, CT 06070.	Town Hall, 933 Hopmeadow Street, Simsbury, CT 06070.	*http://www.msc.fema.gov/lomc.*	Jun. 3, 2016	090035
Florida:						
Alachua	City of Hawthorne (15–04–8602P).	The Honorable Matthew Surrency, Mayor, City of Hawthorne, P.O. Box 2413, Hawthorne, FL 32640.	Building Department, 6700 Southeast 221st Street, Hawthorne, FL 32640.	*http://www.msc.fema.gov/lomc.*	Jun. 16, 2016	120682
Alachua	Unincorporated areas of Alachua County (15–04–A130P).	The Honorable Robert "Hutch" Hutchinson, Chairman, Alachua County Board of Commissioners, 12 Southeast 1st Street, Gainesville, FL 32601.	Alachua County Public Works Department, 5620 Northwest 120th Lane, Gainesville, FL 32601.	*http://www.msc.fema.gov/lomc.*	Jun. 21, 2016	120001

State and county	Location and case No.	Chief executive officer of community	Community map repository	Online location of letter of map revision	Effective date of modification	Community No.
Bay	City of Panama City Beach (15–04–9706P).	The Honorable Gayle Oberst, Mayor, City of Panama City Beach, 110 South Arnold Road, Panama City Beach, FL 32413.	Engineering Department, 110 South Arnold Road, Panama City Beach, FL 32413.	*http://www.msc.fema.gov/lomc.*	Jun. 21, 2016	120013
Bay	Unincorporated areas of Bay County (15–04–9706P).	The Honorable Mike Nelson, Chairman, Bay County Board of Commissioners, 840 West 11th Street, Panama City, FL 32401.	Bay County Planning and Zoning Division, 840 West 11th Street, Panama City, FL 32401.	*http://www.msc.fema.gov/lomc.*	Jun. 21, 2016	120004
Collier	City of Marco Island (15–04–5962P).	The Honorable Bob Brown Chairman, City of Marco Island Council, 50 Bald Eagle Drive, Marco Island, FL 34145.	Growth Management Department, 50 Bald Eagle Drive, Marco Island, FL 34145.	*http://www.msc.fema.gov/lomc.*	May 31, 2016	120426
Collier	City of Naples (16–04–1431P).	The Honorable John Sorey III, Mayor, City of Naples, 735 8th Street South, Naples, FL 34102.	Building Department, 295 Riverside Circle, Naples, FL 34102.	*http://www.msc.fema.gov/lomc.*	Jun. 9, 2016	125130
Collier	Unincorporated areas of Collier County (16–04–1863P).	The Honorable Donna Fiala, Chair, Collier County Board of Commissioners, 3299 Tamiami Trail East, Suite 303, Naples, FL 34112.	Collier County Floodplain Management Section, 2800 North Horseshoe Drive, Naples, FL 34104.	*http://www.msc.fema.gov/lomc.*	Jun. 15, 2016	120067
Miami-Dade	City of Sunny Isles Beach (15–04–7678P).	The Honorable George "Bud" Scholl, Mayor, City of Sunny Isles Beach, 18070 Collins Avenue, Sunny Isles Beach, FL 33160.	Building Department, 18070 Collins Avenue, 3rd Floor, Sunny Isles Beach, FL 33160.	*http://www.msc.fema.gov/lomc.*	Jun. 10, 2016	120688
Monroe	Village of Islamorada (16–04–1346P).	The Honorable Deb Gillis, Mayor, Village of Islamorada, 86800 Overseas Highway, Islamorada, FL 33036.	Planning and Development Department, 86800 Overseas Highway, Islamorada, FL 33036.	*http://www.msc.fema.gov/lomc.*	Jun. 1, 2016	120424
Monroe	City of Marathon (16–04–1559P).	The Honorable Mark Senmartin, Mayor, City of Marathon, 9805 Overseas Highway, Marathon, FL 33050.	Planning Department, 9805 Overseas Highway, Marathon, FL 33050.	*http://www.msc.fema.gov/lomc.*	Jun. 16, 2016	120681
Monroe	Unincorporated areas of Monroe County (16–04–0087P).	The Honorable Heather Carruthers, Mayor, Monroe County Board of Commissioners, 500 Whitehead Street, Suite 102, Key West, FL 33040.	Monroe County Department of Planning and Environmental Resources, 2798 Overseas Highway, Marathon, FL 33050.	*http://www.msc.fema.gov/lomc.*	Jun. 2, 2016	125129
Monroe	Unincorporated areas of Monroe County (16–04–1380P).	The Honorable Heather Carruthers, Mayor, Monroe County Board of Commissioners, 500 Whitehead Street, Suite 102, Key West, FL 33040.	Monroe County Building Department, 2798 Overseas Highway, Suite 300, Marathon, FL 33050.	*http://www.msc.fema.gov/lomc.*	Jun. 17, 2016	125129
Monroe	Unincorporated areas of Monroe County (16–04–1801P).	The Honorable Heather Carruthers, Mayor, Monroe County Board of Commissioners, 500 Whitehead Street, Suite 102, Key West, FL 33040.	Monroe County Building Department, 2798 Overseas Highway, Suite 300, Marathon, FL 33050.	*http://www.msc.fema.gov/lomc.*	Jun. 17, 2016	125129
St. Johns	Unincorporated areas of St. Johns County (15–04–9500P).	The Honorable Jeb Smith, Chairman, St. Johns County Board of Commissioners, 500 San Sebastian View, St. Augustine, FL 32084.	St. Johns County, Building Services Division, 4040 Lewis Speedway, St. Augustine, FL 32084.	*http://www.msc.fema.gov/lomc.*	Jun. 13, 2016	125147
St. Johns	Unincorporated areas of St. Johns County (16–04–0826P).	The Honorable Jeb Smith, Chairman, St. Johns County Board of Commissioners, 500 San Sebastian View, St. Augustine, FL 32084.	St. Johns County, Building Services Division, 4040 Lewis Speedway, St. Augustine, FL 32084.	*http://www.msc.fema.gov/lomc.*	May 31, 2016	125147

State and county	Location and case No.	Chief executive officer of community	Community map repository	Online location of letter of map revision	Effective date of modification	Community No.
New Mexico: Bernalillo.	Unincorporated areas of Bernalillo County (15–06–1772P).	The Honorable Maggie Hart Stebbins, Chair, Bernalillo County Board of Commissioners, 1 Civic Plaza Northwest, Albuquerque, NM 87102.	Bernalillo County Public Works Division, 2400 Broadway Boulevard Southeast, Albuquerque, NM 87102.	*http://www.msc.fema.gov/lomc.*	Jun. 10, 2016	350001
North Carolina: Forsyth.	City of Winston-Salem (15–04–9863P).	The Honorable Allen Joines, Mayor, City of Winston-Salem, 101 North Main Street, Suite 150, Winston-Salem, NC 27101.	City Hall, 101 North Main Street, Winston-Salem, NC 27101.	*http://www.msc.fema.gov/lomc.*	Jun. 16, 2016	375360
Ohio: Montgomery	City of Centerville (15–05–1744P).	The Honorable Brooks Compton, Mayor, City of Centerville, 350 Roselake Drive, Centerville, OH 45458.	Public Works Department, 7970 South Suburban Road, Centerville, OH 45458.	*http://www.msc.fema.gov/lomc.*	Jun. 15, 2016	390408
Texas:						
Bexar	City of San Antonio (15–06–0951P).	The Honorable Ivy R. Taylor, Mayor, City of San Antonio, P.O. Box 839966, San Antonio, TX 78283.	Transportation and Capital Improvements Department, Storm Water Division, 1901 South Alamo Street, 2nd Floor, San Antonio, TX 78204.	*http://www.msc.fema.gov/lomc.*	Jun. 16, 2016	480045
Collin	City of Allen (15–06–3685P).	The Honorable Stephen Terrell, Mayor, City of Allen, 305 Century Parkway, 1st Floor, Allen, TX 75013.	Engineering Department, 305 Century Parkway, Allen, TX 75013.	*http://www.msc.fema.gov/lomc.*	Jun. 10, 2016	480259
Denton	City of Carrollton (15–06–3828P).	The Honorable Matthew Marchant, Mayor, City of Carrollton, P.O. Box 110535, Carrollton, TX 75011.	Building Inspections Department, 1945 East Jackson Road, Carrollton, TX 75006.	*http://www.msc.fema.gov/lomc.*	Jun. 13, 2016	480167
Denton	City of The Colony (15–06–3828P).	The Honorable Joe McCourry, Mayor, City of The Colony, 6800 Main Street, The Colony, TX 75056.	Engineering Department, 6800 Main Street, The Colony, TX 75056.	*http://www.msc.fema.gov/lomc.*	Jun. 13, 2016	481581
Denton	City of Plano (15–06–3828P).	The Honorable Harry LaRosiliere, Mayor, City of Plano, P.O. Box 860358, Plano, TX 75086.	City Hall, 1520 K Avenue, Plano, TX 75074.	*http://www.msc.fema.gov/lomc.*	Jun. 13, 2016	480140
El Paso	City of El Paso (15–06–0864P).	The Honorable Oscar Leeser, Mayor, City of El Paso, 300 North Campbell Street, El Paso, TX 79901.	Land Development Department, 801 Texas Avenue, El Paso, TX 79901.	*http://www.msc.fema.gov/lomc.*	Jun. 9, 2016	480214
Grayson	City of Denison (15–06–2276P).	The Honorable Jared Johnson, Mayor, City of Denison, P.O. Box 347, Denison, TX 75021.	City Hall, 500 West Chestnut Street, Denison, TX 75020.	*http://www.msc.fema.gov/lomc.*	Jun. 8, 2016	480259
Grayson	Unincorporated areas of Grayson County (15–06–2276P).	The Honorable Bill Magers, Grayson County Judge, 100 West Houston Street, Sherman, TX 75090.	Grayson County Development Services Department, 100 West Houston Street, Sherman, TX 75090.	*http://www.msc.fema.gov/lomc.*	Jun. 8, 2016	480829
Montgomery	City of Conroe (15–06–1222P).	The Honorable Webb K. Melder, Mayor, City of Conroe, P.O. Box 3066, Conroe, TX 77305.	Department of Public Works, Engineering Division, 300 West Davis Street, Conroe, TX 77301.	*http://www.msc.fema.gov/lomc.*	Jun. 13, 2016	480484
Travis	City of Pflugerville (15–06–3658P).	The Honorable Jeff Coleman, Mayor, City of Pflugerville, P.O. Box 589, Pflugerville, TX 78660.	Development Services Department, 201–B East Pecan Street, Pflugerville, TX 78691.	*http://www.msc.fema.gov/lomc.*	Jun. 3, 2016	481028
Travis	Unincorporated areas of Travis County (15–06–3658P).	The Honorable Sarah Eckhardt, Travis County Judge, P.O. Box 1748, Austin, TX 78767.	Travis County Engineering Department, 700 Lavaca Street, Austin, TX 78767.	*http://www.msc.fema.gov/lomc.*	Jun. 3, 2016	481026
Travis	Unincorporated areas of Travis County (15–06–4029P).	The Honorable Sarah Eckhardt, Travis County Judge, P.O. Box 1748, Austin, TX 78767.	Travis County Administration Building, 700 Lavaca Street, 5th Floor, Austin, TX 78767.	*http://www.msc.fema.gov/lomc.*	May 26, 2016	481026
Wichita	City of Wichita Falls (15–06–2136P).	The Honorable Glenn Barham, Mayor, City of Wichita Falls, P.O. Box 1431, Wichita Falls, TX 76307.	City Hall, 1300 7th Street, Room 105, Wichita Falls, TX 76301.	*http://www.msc.fema.gov/lomc.*	Jun. 14, 2016	480662

State and county	Location and case No.	Chief executive officer of community	Community map repository	Online location of letter of map revision	Effective date of modification	Community No.
Utah: Washington	Unincorporated areas of Washington County (15–08–1225P).	The Honorable Alan D. Gardner, Chairman, Washington County Board of Commissioners, 197 East Tabernacle Street, St. George, UT 84770.	Washington County Planning and Zoning Department, 197 East Tabernacle Street, St. George, UT 84770.	*http://www.msc.fema.gov/lomc.*	Jun. 15, 2016	490224
Virginia:.						
Albemarle	Unincorporated areas of Albemarle County (15–03–2153P).	The Honorable Thomas Foley, Albemarle County Executive, 401 McIntire Road, Charlottesville, VA 22902.	Albemarle County Department of Community Development, 401 McIntire Road, Charlottesville, VA 22902.	*http://www.msc.fema.gov/lomc.*	May 23, 2016	510006
Chesterfield ...	Unincorporated areas of Chesterfield County (15–03–2769P).	The Honorable Steve A. Elswick, Chairman, Chesterfield County Board of Supervisors, P.O. Box 40, Chesterfield, VA 23832.	Chesterfield County Department of Environmental Engineering, 9800 Government Center Parkway, Chesterfield, VA 23832.	*http://www.msc.fema.gov/lomc.*	Jun. 10, 2016	510035
Fauquier	Unincorporated areas of Fauquier County (15–03–0741P).	The Honorable Chester W. Stribling, Chairman, Fauquier County Board of Supervisors, 10 Hotel Street, Suite 208, Warrenton, VA 20186.	Fauquier County Department of Community Development, Zoning and Development Services, 29 Ashby Street, Suite 310, Warrenton, VA 20186.	*http://www.msc.fema.gov/lomc.*	Jun. 9, 2016	510055
Shenandoah ..	Unincorporated areas of Shenandoah County (15–03–2087P).	The Honorable Conrad A. Helsley, Chairman, Shenandoah County Board of Supervisors, 600 North Main Street, Suite 102, Woodstock, VA 22664.	Shenandoah County GIS Department, 600 North Main Street, Suite 102, Woodstock, VA 22664.	*http://www.msc.fema.gov/lomc.*	May 23, 2016	510147

[FR Doc. 2016–07594 Filed 4–1–16; 8:45 am]

BILLING CODE 9110–12–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–4259–DR; Docket ID FEMA–2016–0001]

Georgia; Amendment No. 1 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of Georgia (FEMA–4259–DR), dated February 26, 2016, and related determinations.

DATES: *Effective Date:* March 28, 2016.

FOR FURTHER INFORMATION CONTACT: Dean Webster, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW., Washington, DC 20472, (202) 646–2833.

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the State of Georgia is hereby amended to include the following area among those areas determined to have been adversely affected by the event declared a major disaster by the President in his declaration of February 26, 2016.

Union County for Public Assistance.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050 Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

W. Craig Fugate,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2016–07508 Filed 4–1–16; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket ID FEMA–2016–0002; Internal Agency Docket No. FEMA–B–1615]

Proposed Flood Hazard Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: Comments are requested on proposed flood hazard determinations, which may include additions or modifications of any Base Flood Elevation (BFE), base flood depth, Special Flood Hazard Area (SFHA) boundary or zone designation, or regulatory floodway on the Flood Insurance Rate Maps (FIRMs), and where applicable, in the supporting Flood Insurance Study (FIS) reports for the communities listed in the table below. The purpose of this notice is to seek general information and comment regarding the preliminary FIRM, and where applicable, the FIS report that the Federal Emergency Management Agency (FEMA) has provided to the affected communities. The FIRM and FIS report are the basis of the floodplain management measures that the community is required either to adopt or to show evidence of having in effect

in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP). In addition, the FIRM and FIS report, once effective, will be used by insurance agents and others to calculate appropriate flood insurance premium rates for new buildings and the contents of those buildings.

DATES: Comments are to be submitted on or before July 5, 2016.

ADDRESSES: The Preliminary FIRM, and where applicable, the FIS report for each community are available for inspection at both the online location and the respective Community Map Repository address listed in the tables below. Additionally, the current effective FIRM and FIS report for each community are accessible online through the FEMA Map Service Center at *www.msc.fema.gov* for comparison.

You may submit comments, identified by Docket No. FEMA–B–1615, to Rick Sacbibit, Chief, Engineering Services Branch, Federal Insurance and Mitigation Administration, FEMA, 500 C Street SW., Washington, DC 20472, (202) 646–7659, or (email) *patrick.sacbibit@fema.dhs.gov.*

FOR FURTHER INFORMATION CONTACT: Rick Sacbibit, Chief, Engineering Services Branch, Federal Insurance and Mitigation Administration, FEMA, 500 C Street SW., Washington, DC 20472, (202) 646–7659, or (email) *patrick.sacbibit@fema.dhs.gov;* or visit the FEMA Map Information eXchange (FMIX) online at *www.floodmaps.fema.gov/fhm/fmx_main.html.*

SUPPLEMENTARY INFORMATION: FEMA proposes to make flood hazard determinations for each community listed below, in accordance with section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR 67.4(a).

These proposed flood hazard determinations, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own or pursuant to policies established by other Federal, State, or regional entities. These flood hazard determinations are used to meet the floodplain management requirements of the NFIP and also are used to calculate the appropriate flood insurance premium rates for new buildings built after the FIRM and FIS report become effective.

The communities affected by the flood hazard determinations are provided in the tables below. Any request for reconsideration of the revised flood hazard information shown on the Preliminary FIRM and FIS report that satisfies the data requirements outlined in 44 CFR 67.6(b) is considered an appeal. Comments unrelated to the flood hazard determinations also will be considered before the FIRM and FIS report become effective.

Use of a Scientific Resolution Panel (SRP) is available to communities in support of the appeal resolution process. SRPs are independent panels of experts in hydrology, hydraulics, and other pertinent sciences established to review conflicting scientific and technical data and provide recommendations for resolution. Use of the SRP only may be exercised after FEMA and local communities have been engaged in a collaborative consultation process for at least 60 days without a mutually acceptable resolution of an appeal. Additional information regarding the SRP process can be found online at *http://floodsrp.org/pdfs/srp_fact_sheet.pdf.*

The watersheds and/or communities affected are listed in the tables below. The Preliminary FIRM, and where applicable, FIS report for each community are available for inspection at both the online location and the respective Community Map Repository address listed in the tables. For communities with multiple ongoing Preliminary studies, the studies can be identified by the unique project number and Preliminary FIRM date listed in the tables. Additionally, the current effective FIRM and FIS report for each community are accessible online through the FEMA Map Service Center at *www.msc.fema.gov* for comparison.

(Catalog of Federal Domestic Assistance No. 97.022, "Flood Insurance.")

Dated: March 22, 2016.

Roy E. Wright,

Deputy Associate Administrator for Insurance and Mitigation, Department of Homeland Security, Federal Emergency Management Agency.

Community	Community map repository address
St. Bernard Parish, Louisiana (All Jurisdictions)	
Maps available for inspection online at: *http://www.fema.gov/preliminaryfloodhazarddata*	
Project: 12–06–0629S Preliminary Date: September 29, 2015	
Unincorporated Areas of St. Bernard Parish	St. Bernard Parish Community Development Office, 8201 West Judge Perez Drive, Chalmette, LA 70043.

[FR Doc. 2016–07504 Filed 4–1–16; 8:45 am]

BILLING CODE 9110–12–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket ID FEMA–2016–0002; Internal Agency Docket No. FEMA–B–1553]

Proposed Flood Hazard Determinations for Coconino County, Arizona and Incorporated Areas

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Proposed Notice; withdrawal.

SUMMARY: The Federal Emergency Management Agency (FEMA) is withdrawing its proposed notice concerning proposed flood hazard determinations, which may include the addition or modification of any Base Flood Elevation, base flood depth, Special Flood Hazard Area boundary or zone designation, or regulatory floodway (herein after referred to as proposed flood hazard determinations) on the Flood Insurance Rate Maps and, where applicable, in the supporting

Flood Insurance Study reports for Coconino County, Arizona, and Incorporated Areas.

DATES: This withdrawal is effective April 4, 2016.

ADDRESSES: You may submit comments, identified by Docket No. FEMA–B–1553 to Luis Rodriguez, Chief, Engineering Management Branch, Federal Insurance and Mitigation Administration, Federal Emergency Management Agency, 500 C Street SW., Washington, DC 20472, (202) 646–4064, or (email) *Luis.Rodriguez3@fema.dhs.gov.*

FOR FURTHER INFORMATION CONTACT: Luis Rodriguez, Chief, Engineering Management Branch, Federal Insurance and Mitigation Administration, Federal Emergency Management Agency, 500 C Street SW., Washington, DC 20472, (202) 646–4064, or (email) *Luis.Rodriguez3@fema.dhs.gov.*

SUPPLEMENTARY INFORMATION: On January 19, 2016, FEMA published a proposed notice 81 FR 2898, proposing flood hazard determinations for Coconino County, Arizona, and Incorporated Areas. FEMA is withdrawing the proposed notice.

Authority: 42 U.S.C. 4104; 44 CFR 67.4.

Dated: March 20, 2016.

Roy E. Wright,

Deputy Associate Administrator for Insurance and Mitigation, Department of Homeland Security, Federal Emergency Management Agency.

[FR Doc. 2016–07596 Filed 4–1–16; 8:45 am]

BILLING CODE 9110–12–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket ID FEMA–2016–0002; Internal Agency Docket No. FEMA–B–1604]

Proposed Flood Hazard Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: Comments are requested on proposed flood hazard determinations, which may include additions or modifications of any Base Flood Elevation (BFE), base flood depth, Special Flood Hazard Area (SFHA) boundary or zone designation, or regulatory floodway on the Flood Insurance Rate Maps (FIRMs), and where applicable, in the supporting Flood Insurance Study (FIS) reports for the communities listed in the table below. The purpose of this notice is to seek general information and comment regarding the preliminary FIRM, and where applicable, the FIS report that the Federal Emergency Management Agency (FEMA) has provided to the affected communities. The FIRM and FIS report are the basis of the floodplain management measures that the community is required either to adopt or to show evidence of having in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP). In addition, the FIRM and FIS report, once effective, will be used by insurance agents and others to calculate appropriate flood insurance premium rates for new buildings and the contents of those buildings.

DATES: Comments are to be submitted on or before July 5, 2016.

ADDRESSES: The Preliminary FIRM, and where applicable, the FIS report for each community are available for inspection at both the online location and the respective Community Map Repository address listed in the tables below. Additionally, the current effective FIRM and FIS report for each community are accessible online through the FEMA Map Service Center at *www.msc.fema.gov* for comparison.

You may submit comments, identified by Docket No. FEMA–B–1604, to Luis Rodriguez, Chief, Engineering Management Branch, Federal Insurance and Mitigation Administration, FEMA, 500 C Street SW., Washington, DC 20472, (202) 646–4064, or (email) *Luis.Rodriguez3@fema.dhs.gov.*

FOR FURTHER INFORMATION CONTACT: Luis Rodriguez, Chief, Engineering Management Branch, Federal Insurance and Mitigation Administration, FEMA, 500 C Street SW., Washington, DC 20472, (202) 646–4064, or (email) *Luis.Rodriguez3@fema.dhs.gov;* or visit the FEMA Map Information eXchange (FMIX) online at *www.floodmaps.fema.gov/fhm/fmx_main.html.*

SUPPLEMENTARY INFORMATION: FEMA proposes to make flood hazard determinations for each community listed below, in accordance with section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR 67.4(a).

These proposed flood hazard determinations, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own or pursuant to policies established by other Federal, State, or regional entities. These flood hazard determinations are used to meet the floodplain management requirements of the NFIP and also are used to calculate the appropriate flood insurance premium rates for new buildings built after the FIRM and FIS report become effective.

The communities affected by the flood hazard determinations are provided in the tables below. Any request for reconsideration of the revised flood hazard information shown on the Preliminary FIRM and FIS report that satisfies the data requirements outlined in 44 CFR 67.6(b) is considered an appeal. Comments unrelated to the flood hazard determinations also will be considered before the FIRM and FIS report become effective.

Use of a Scientific Resolution Panel (SRP) is available to communities in support of the appeal resolution process. SRPs are independent panels of experts in hydrology, hydraulics, and other pertinent sciences established to review conflicting scientific and technical data and provide recommendations for resolution. Use of the SRP only may be exercised after FEMA and local communities have been engaged in a collaborative consultation process for at least 60 days without a mutually acceptable resolution of an appeal. Additional information regarding the SRP process can be found online at *http://floodsrp.org/pdfs/srp_fact_sheet.pdf.*

The watersheds and/or communities affected are listed in the tables below. The Preliminary FIRM, and where applicable, FIS report for each community are available for inspection at both the online location and the respective Community Map Repository address listed in the tables. For communities with multiple ongoing Preliminary studies, the studies can be identified by the unique project number and Preliminary FIRM date listed in the tables. Additionally, the current effective FIRM and FIS report for each community are accessible online through the FEMA Map Service Center at *www.msc.fema.gov* for comparison.

(Catalog of Federal Domestic Assistance No. 97.022, "Flood Insurance.")

Dated: March 20, 2016.

Roy E. Wright,

Deputy Associate Administrator for Insurance and Mitigation, Department of Homeland Security, Federal Emergency Management Agency.

I. Watershed-based studies:

Community	Community map repository address
Santa Clara Watershed	
Maps Available for Inspection Online at: *http://www.fema.gov/preliminaryfloodhazarddata*	
Los Angeles County, California, and Incorporated Areas	
City of Santa Clarita	23920 Valencia Boulevard, Santa Clarita, CA 91355.
Unincorporated Areas of Los Angeles County	Public Works Headquarters, Watershed Management Division, 900 South Fremont Avenue, Alhambra, CA 91803.
Lower Missouri-Moreau Watershed	
Maps Available for Inspection Online at: *http://www.fema.gov/preliminaryfloodhazarddata*	
Boone County, Missouri, and Incorporated Areas	
City of Columbia	City Hall, 701 East Broadway, Columbia, MO 65205.
City of Rocheport	City Hall, 703 First Street, Rocheport, MO 65279.
Town of McBaine	Boone County Government Center, Assessor's Office, 801 East Walnut Street, 1st Floor, Columbia, MO 65201.
Unincorporated Areas of Boone County	Boone County Government Center, Assessor's Office, 801 East Walnut Street, 1st Floor, Columbia, MO 65201.
Village of Hartsburg	Boone County Government Center, Assessor's Office, 801 East Walnut Street, 1st Floor, Columbia, MO 65201.
Village of Huntsdale	Boone County Government Center, Assessor's Office, 801 East Walnut Street, 1st Floor, Columbia, MO 65201.

II. Non-watershed-based studies:

Community	Community Map Repository Address
Humboldt County, California and Incorporated Areas	
Maps Available for Inspection Online at: *http://www.fema.gov/preliminaryfloodhazarddata*	
Project: 11–09–0847S Preliminary Date: October 27, 2015	
City of Arcata	Department of Public Works, 736 F Street, Arcata, CA 95521.
City of Eureka	City Hall, 531 K Street, Eureka, CA 95501.
Town of Trinidad	Public Works Department, 409 Trinity Street, Trinidad, CA 95570.
Unincorporated Areas of Humboldt County	Clark Complex, 3015 H Street, Eureka, CA 95501.
Monterey County, California and Incorporated Areas	
Maps Available for Inspection Online at: *http://www.fema.gov/preliminaryfloodhazarddata*	
Project: 11–09–0854S Preliminary Date: November 13, 2015	
City of Carmel By The Sea	City Hall, Monte Verde Street, Carmel By the Sea, CA 93921.
City of Marina	Public Works Department, 209 Cypress Avenue, Marina, CA 93933.
City of Monterey	Plans and Public Works Department, 526 Pierce Street, Monterey, CA 93940.
City of Pacific Grove	City Hall, 300 Forest Avenue, Pacific Grove, CA 93950.
City of Sand City	Planning Department, One Sylvan Park, Sand City, CA 93955.
City of Seaside	Public Works Department, 440 Harcourt Avenue, Seaside, CA 93955.
Unincorporated Areas of Monterey County	Monterey County Water Resources Agency, 893 Blanco Circle, Salinas, CA 93901.
City and County of San Francisco, California, and Incorporated Areas	
Maps Available for Inspection Online at: *http://www.fema.gov/preliminaryfloodhazarddata*	
Project: 11–09–1225S Preliminary Date: November 12, 2015	
City and County of San Francisco	Office of the City Administrator, City Hall, Room 362, One Dr. Carlton B. Goodlett Place, San Francisco, CA 94102.
San Mateo County, California and Incorporated Areas	
Maps Available for Inspection Online at: *http://www.fema.gov/preliminaryfloodhazarddata*	

Community	Community Map Repository Address
Project: 11–09–0852S Preliminary Date: August 13, 2015	
City of Daly City	Public Works, Engineering Division, 333 90th Street, Daly City, CA 94015.
City of Half Moon Bay	City Hall, 501 Main Street, Half Moon Bay, CA 94019.
City of Pacifica	Engineering Division, 151 Milagra Drive, Pacifica, CA 94044.
Unincorporated Areas of San Mateo County	Planning and Building Department, 455 County Center, Redwood City, CA 94063.
San Mateo County, California and Incorporated Areas	
Maps Available for Inspection Online at: *http://www.fema.gov/preliminaryfloodhazarddata*	
Project: 11–09–1227S Preliminary Date: September 14, 2015	
City of Belmont	Public Works Department, One Twin Pines Lane, Belmont, CA 94002.
City of Brisbane	Public Works, 50 Park Place, Brisbane, CA 94005.
City of Burlingame	City Hall, 501 Primrose Road, Burlingame, CA 94010.
City of East Palo Alto	Community and Economic Development Department, 1960 Tate Street, East Palo Alto, CA 94303.
City of Foster City	Public Works, 610 Foster City Boulevard, Foster City, CA 94404.
City of Menlo Park	City Hall, 701 Laurel Street, Menlo Park, CA 94025.
City of Millbrae	City Hall, 621 Magnolia Avenue, Millbrae, CA 94030.
City of Redwood City	City Hall, 1017 Middlefield Road, Redwood City, CA 94063.
City of San Bruno	Public Works, 567 El Camino Real, San Bruno, CA 94066.
City of San Carlos	Building Division, 600 Elm Street, San Carlos, CA 94070.
City of San Mateo	Public Works Department, 330 West 20th Avenue, San Mateo, CA 94403.
City of South San Francisco	City Hall, 400 Grand Avenue, South San Francisco, CA 94080.
Unincorporated Areas of San Mateo County	Planning and Building Department, 455 County Center, Redwood City, CA 94063.
Dallas County, Iowa, and Incorporated Areas	
Maps Available for Inspection Online at: *http://www.fema.gov/preliminaryfloodhazarddata*	
Project: 15–07–0900S Preliminary Date: June 22, 2015	
City of Adel	City Hall, 301 South 10th Street, Adel, IA 50003.
City of Dallas Center	City Hall, 1502 Walnut Street, Dallas Center, IA 50063.
City of Dawson	City Hall, 208 South 1st Street, Dawson, IA 50066.
City of De Soto	City Hall, 405 Walnut Street, De Soto, IA 50069.
City of Dexter	City Hall, 911 State Street, Dexter, IA 50070.
City of Granger	City Hall, 1906 Main Street, Granger, IA 50109.
City of Perry	Building Official's Office, 1102 Willis Avenue, Perry, IA 50220.
City of Redfield	City Hall, 808 1st Street, Redfield, IA 50233.
City of Van Meter	City Hall, 310 Mill Street, Van Meter, IA 50261.
City of Waukee	City Hall, 230 West Hickman Road, Waukee, IA 50263.
City of Woodward	City Hall, 105 East 2nd Street, Woodward, IA 50276.
Unincorporated Areas of Dallas County	Dallas County Planning and Development Department, Director's Office, 907 Court Street, Adel, IA 50003.
Warren County, Iowa, and Incorporated Areas	
Maps Available for Inspection Online at: *http://www.fema.gov/preliminaryfloodhazarddata*	
Project: 15–07–0898S Preliminary Date: June 22, 2015	
City of Ackworth	City Hall, 106 East Main Street, Ackworth, IA 50001.
City of Bevington	City Hall, 202 Jefferson Street, Bevington, IA 50033.
City of Carlisle	City Hall, 195 North 1st Street, Carlisle, IA 50047.
City of Des Moines	Permit and Development Center, 602 Robert D. Ray Drive, Des Moines, IA 50309.
City of Hartford	City Hall, 150 West Elm Street, Hartford, IA 50118.
City of Indianola	City Hall, 110 North 1st Street, Indianola, IA 50125.
City of Lacona	City Hall, 109 East Main Street, Lacona, IA 50139.
City of Martensdale	City Hall, 380 Iowa Avenue, Martensdale, IA 50160.
City of Norwalk	City Planner's Office, 705 North Avenue, Norwalk, IA 50211.
City of Spring Hill	City Clerk's Office, 2033 2nd Street, Spring Hill, IA 50125.
Unincorporated Areas of Warren County	Warren County Administration Building, 301 North Buxton Street, Indianola, IA 50125.

Community	Community Map Repository Address
Madison County, Iowa and Incorporated Areas	
Maps Available for Inspection Online at: *http://www.fema.gov/preliminaryfloodhazarddata*	
Project: 15–07–0897S Preliminary Date: May 18, 2015	
City of Earlham	City Hall, 140 South Chestnut Avenue, Earlham, IA 50072.
City of East Peru	Community Building, 120 Brown Street, East Peru, IA 50222.
City of Patterson	Patterson City Clerk's Office, 1730 110th Avenue, Murray, IA 50174.
City of St. Charles	City Hall, 113 South Lumber Street, St. Charles, IA 50240.
City of Truro	City Hall, 120 East Center Street, Truro, IA 50257.
City of Winterset	City Hall, 124 West Court Avenue, Winterset, IA 50273.
Unincorporated Areas of Madison County	Madison County Courthouse, 112 North John Wayne Drive, Winterset, IA 50273.
Sandusky County, Ohio and Incorporated Areas	
Maps Available for Inspection Online at: *http://www.fema.gov/preliminaryfloodhazarddata*	
Project: 11–05–5340S Preliminary Dates: July 17, 2015 and December 9, 2015	
City of Fremont	323 South Front Street, Fremont, OH 43420.
Unincorporated Areas of Sandusky County	108 South Park Avenue, Fremont, OH 43420.

[FR Doc. 2016–07495 Filed 4–1–16; 8:45 am]

BILLING CODE 9110–12–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–4268–DR; Docket ID FEMA–2016–0001]

Mississippi; Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the State of Mississippi (FEMA–4268–DR), dated March 25, 2016, and related determinations.

DATES: *Effective Date:* March 25, 2016.

FOR FURTHER INFORMATION CONTACT: Dean Webster, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW., Washington, DC 20472, (202) 646–2833.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated March 25, 2016, the President issued a major disaster declaration under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (the "Stafford Act"), as follows:

> I have determined that the damage in certain areas of the State of Mississippi resulting from severe storms and flooding beginning on March 9, 2016, and continuing, is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (the "Stafford Act"). Therefore, I declare that such a major disaster exists in the State of Mississippi.
>
> In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes such amounts as you find necessary for Federal disaster assistance and administrative expenses.
>
> You are authorized to provide Individual Assistance in the designated areas and Hazard Mitigation throughout the State. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Hazard Mitigation and Other Needs Assistance will be limited to 75 percent of the total eligible costs.
>
> Further, you are authorized to make changes to this declaration for the approved assistance to the extent allowable under the Stafford Act.

The time period prescribed for the implementation of section 310(a), Priority to Certain Applications for Public Facility and Public Housing Assistance, 42 U.S.C. 5153, shall be for a period not to exceed six months after the date of this declaration.

The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Administrator, under Executive Order 12148, as amended, Lai Sun Yee, of FEMA is appointed to act as the Federal Coordinating Officer for this major disaster.

The following areas of the State of Mississippi have been designated as adversely affected by this major disaster:

> Bolivar, Coahoma, and Washington Counties for Individual Assistance.
>
> All areas within the State of Mississippi are eligible for assistance under the Hazard Mitigation Grant Program.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

W. Craig Fugate,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2016–07507 Filed 4–1–16; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5932–N–01]

Request for Specific Policy Proposals and Methods of Research and Evaluation for MTW Demonstration Expansion

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, and Office of the Assistant Secretary for Policy Development and Research, HUD.

ACTION: Notice.

SUMMARY: This notice is to solicit recommendations for specific policy proposals and methods of research and

evaluation to be implemented as part of the expansion of the Moving to Work (MTW) demonstration program. The 2016 Consolidated Appropriations Act (the Act) authorizes HUD to expand the MTW demonstration program by an additional 100 high performing Public Housing Agencies over a period of seven years.[1] Agencies will be added to the MTW demonstration by cohort and the Act requires that for each cohort of agencies "the Secretary shall direct one specific policy change to be implemented by the agencies." Having an entire cohort adopt a specific policy will facilitate the evaluation of that policy.

DATES: *Comments Due Date:* May 4, 2016.

ADDRESSES: Interested persons are invited to submit comments regarding specific policy and evaluation proposals to the Moving to Work Office, Office of Public and Indian Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 4130, Washington, DC 20410–0001 or email at *mtw-info@hud.gov.* HUD strongly encourages commenters to submit comments electronically. Communications must refer to the above docket number and title and should contain the information specified in the "Request for Public Comments" section.

No Facsimile Comments. Facsimile (FAX) comments are not acceptable.

Public Inspection of Public Comments. A summary of all comments received by HUD will be made available on HUD's Web site at: *http://www.hud.gov/mtw.*

FOR FURTHER INFORMATION CONTACT: Questions concerning this notice should be directed to the Moving to Work Office, Office of Public and Indian Housing, Department of Housing and Urban Development at *mtw-info@hud.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

The statutory purpose[2] of the MTW demonstration is to give agencies and HUD the flexibility to design and test various approaches for providing and administering housing assistance that:

(1) reduce cost and achieve greater cost effectiveness in federal expenditures;

(2) give incentives to families with children where the head of household is working; is seeking work; or is preparing for work by participating in job training, educational programs, or programs that assist people to obtain employment and become economically self-sufficient; and

(3) increase housing choices for eligible low-income families.

Agencies will be added to the MTW demonstration by cohort and per the Act: "the Secretary shall direct one specific policy change to be implemented by the agencies, and with the approval of the Secretary, such agencies may implement additional policy changes."

As part of the process to expand the MTW demonstration, the Act states that "[t]he Secretary shall establish a research advisory committee which shall advise the Secretary with respect to specific policy proposals and methods of research and evaluation for the demonstration." Through this Notice, HUD is requesting specific policy proposal recommendations, and methods for research and evaluation recommendations, that will inform the advisory committee in making its own recommendations to the Secretary.

With the expansion of the MTW demonstration, HUD aims to learn from MTW interventions in order to improve the delivery of federally assisted housing and promote self-sufficiency for low-income families across the country.

II. Request for Public Comments

HUD seeks public comments on specific policy proposal recommendations, and research and evaluation proposal recommendations, as described in sections II.A and II.B below. Public housing agencies, HUD-assisted housing residents, researchers, and HUD stakeholders are encouraged to submit comments.

A. Specific Policy Proposal Recommendations

HUD seeks specific policy proposal recommendations related to the three MTW demonstration statutory objectives of cost effectiveness, self-sufficiency, and housing choice. For example, HUD is interested in specific policy areas such as:

- Increasing moves of low-income families to high-opportunity neighborhoods;
- Improving education outcomes through housing partnerships;
- Using administrative flexibilities to reduce costs and improve operations, governance, and financial management;
- Structuring alternative rent-setting methods;
- Streamlining admissions and/or occupancy policies (*i.e.,* work requirements, time limits, waitlist preference alterations);
- Developing strategies to better utilize project-based vouchers;
- Improving the health and well-being of elderly and disabled residents;
- Achieving the goal of ending homelessness for families, veterans, youth, and the chronically homeless; and
- Cultivating supportive or sponsor-based housing policies.

B. Research and Evaluation Proposal Recommendations

HUD also seeks recommendations for research and evaluation methods to be utilized in association with specific policy proposals that will be implemented by MTW agencies in the expanded MTW demonstration. The Act specifically requires that rigorous research methods be used to test the policy proposals. HUD seeks specific proposals of what the committee should consider as rigorous research in addition to randomized control trials. In addition, the law calls for the advisory committee to recommend what policies already are proven effective and could be implemented without further research. HUD seeks comment on what policies should be considered as having already been proven successful, with specific reference to the rigorous research that supports the claim.

Dated: March 28, 2016.

Lourdes Castro Ramírez,

Principal Deputy Assistant Secretary for Public and Indian Housing.

Katherine M. O'Regan,

Assistant Secretary for Policy Development and Research.

[FR Doc. 2016–07663 Filed 4–1–16; 8:45 am]

BILLING CODE 4210–67–P

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[1] Pub. Law 114–113, Sec. 239.

[2] Congress originally authorized the MTW demonstration in 1996 (Pub. Law 104–134; 42 U.S.C. 1437f note).

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5916–N–05]

60-Day Notice of Proposed Information Collection: Energy and Performance Information Center (EPIC)

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Notice.

SUMMARY: HUD is seeking approval from the Office of Management and Budget (OMB) for the information collection described below. In accordance with the Paperwork Reduction Act, HUD is requesting comment from all interested parties on the proposed collection of information. The purpose of this notice is to allow for 60 days of public comment.

DATES: *Comments Due Date:* June 3, 2016.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: Colette Pollard, Reports Management Officer, QDAM, Department of Housing and Urban Development, 451 7th Street SW., Room 4176, Washington, DC 20410–5000; telephone 202–402–3400 (this is not a toll-free number) or email at *Colette.Pollard@hud.gov* for a copy of the proposed forms or other available information. Persons with hearing or speech impairments may access this number through TTY by calling the toll-free Federal Relay Service at (800) 877–8339.

FOR FURTHER INFORMATION CONTACT: Arlette Mussington, Office of Policy, Programs and Legislative Initiatives, PIH, Department of Housing and Urban Development, 451 7th Street SW., (L'Enfant Plaza, Room 2206), Washington, DC 20410; telephone 202–402–4109, (this is not a toll-free number). Persons with hearing or speech impairments may access this number via TTY by calling the Federal Information Relay Service at (800) 877–8339. Copies of available documents submitted to OMB may be obtained from Ms. Mussington.

SUPPLEMENTARY INFORMATION: This notice informs the public that HUD is seeking approval from OMB for the information collection described in section A.

A. Overview of Information Collection

Title of Information Collection: Energy and Performance Information Center (EPIC).

OMB Approval Number: 2577–0274.

Type of Request: Revision of a currently approved collection.

Form Numbers: N/A—all information collected electronically.

Description of the need for the information and proposed use: The Department has recognized the need for improving energy efficiency in affordable housing and has prioritized this in Agency Priority Goal # 4, Measure # 13. The energy efficiency data collected through EPIC gives the Department a more comprehensive dataset regarding energy efficiency. The EPIC data system will gradually automate the collection of the five year plan and annual statement forms from grantees. These are required forms presently collected in hard copy on Forms HUD 50075.1 and HUD 50075.2 under collection OMB control number 2577–0226. These forms also collect data on the eventual, actual use of funds; this data will be gradually collected electronically through the EPIC data system as well. Electronic collection will enable the Department to aggregate information about the way grantees are using Federal funding. Additionally, PHA grantees will be able to submit Replacement Housing Factor fund plans, the mechanism by which PHAs are allowed to accumulate special funds received based on units removed from the inventory from year to year. This information is presently collected in hard copy at the field office level; the EPIC data system will automate and centralize this collection in order to streamline the process and improve transparency. Furthermore, the EPIC data system will be loaded with Physical Needs Assessment ("PNA") data. This data being in the system coupled with the electronic planning process will streamline grantee planning. The EPIC data system will collect information about the Energy Performance Contract ("EPC") process, including the energy efficiency improvements. As the Department moves to shrink its energy footprint in spite of rising energy costs, clear and comprehensive data on this process will be crucial to its success. Finally, the Department has prioritized in Agency Performance Goal # 2, Measure # 5 making housing more available for more families. In the light of the recent housing crisis, this goal has become simultaneously more challenging and more important. Tracking of the use of Federal funds paid through the Public Housing Capital Fund, the only Federal funding stream dedicated to the capital needs of the nation's last resort housing option, is crucial to understanding how the Department can properly and efficiently assist grantees in meeting this goal as well as assessing the Department's own progress. The EPIC data system will track development of public housing with Federal funds and through other means, including mixed-finance development.

Respondents (*i.e.* affected public): Members of Affected Public: State, Local or Local Governments and Non-profit organizations.

Estimated Number of Respondents: 3,150.

Estimated Number of Responses: 31,800 annual responses .

Frequency of Response: 1.

Average Hours per Response: 2.19 .

Total Estimated Burdens: 69,645 hours.

B. Solicitation of Public Comment

This notice is soliciting comments from members of the public and affected parties concerning the collection of information described in section A on the following:

(1) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) The accuracy of the agency's estimate of the burden of the proposed collection of information;

(3) Ways to enhance the quality, utility, and clarity of the information to be collected; and

(4) Ways to minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

HUD encourages interested parties to submit comment in response to these questions.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. chapter 35 as amended.

Dated: March 26, 2016.

Merrie Nichols-Dixon,

Deputy Director, Office of Policy, Programs and Legislative Initiatives.

[FR Doc. 2016–07665 Filed 4–1–16; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

[167 A2100DD/AAKC001030/ A0A501010.999900]

Indian Gaming; Tribal-State Class III Gaming Compact Taking Effect in the State of New Mexico

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice.

SUMMARY: The Pueblo of Sandia and State of New Mexico entered into a Tribal-State compact governing Class III gaming; this notice announces that the compact is taking effect.

DATES: Effective April 4, 2016.

FOR FURTHER INFORMATION CONTACT: Ms. Paula L. Hart, Director, Office of Indian Gaming, Office of the Assistant Secretary—Indian Affairs, Washington, DC 20240, (202) 219–4066.

SUPPLEMENTARY INFORMATION: Section 11 of the Indian Gaming Regulatory Act (IGRA) requires the Secretary of the Interior to publish in the **Federal Register** notice of approved Tribal-State compacts that are for the purpose of engaging in Class III gaming activities on Indian lands. *See* Public Law 100–

497, 25 U.S.C. 2701 *et seq.* All Tribal-State Class III compacts are subject to review and approval by the Secretary under 25 CFR 293.4. The Secretary took no action on the Pueblo of Sandia-State of New Mexico compact within 45 days of its submission. Therefore, the compact is considered to have been approved, but only to the extent the compact is consistent with IGRA. *See* 25 U.S.C. 2710(d)(8)(C).

Dated: March 17, 2016.

Lawrence S. Roberts,

Acting Assistant Secretary—Indian Affairs.

[FR Doc. 2016–07622 Filed 4–1–16; 8:45 am]

BILLING CODE 4337–15–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

[167 A2100DD/AAKC001030/ A0A501010.999900]

Indian Gaming; Extension of Tribal-State Class III Gaming Compact (Flandreau Santee Sioux Tribe and the State of South Dakota)

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice.

SUMMARY: This notice announces the extension of the Class III gaming compact between the Flandreau Santee Sioux Tribe and the State of South Dakota.

DATES: This extension is effective on April 4, 2016.

FOR FURTHER INFORMATION CONTACT: Ms. Paula L. Hart, Director, Office of Indian Gaming, Office of the Assistant Secretary—Indian Affairs, Washington, DC 20240, (202) 219–4066.

SUPPLEMENTARY INFORMATION: Pursuant to 25 CFR 293.5, an extension to an existing Tribal-State Class III gaming compact does not require approval by the Secretary if the extension does not modify any other terms of the compact. The Flandreau Santee Sioux Tribe and the State of South Dakota have reached an agreement to extend the expiration of their existing Tribal-State Class III gaming compact until September 7, 2016. This publishes notice of the new expiration date of the compact.

Dated: March 25, 2016.

Lawrence S. Roberts,

Acting Assistant Secretary—Indian Affairs.

[FR Doc. 2016–07632 Filed 4–1–16; 8:45 am]

BILLING CODE 4337–15–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

[167 A2100DD/AAKC001030/ A0A501010.999900]

Indian Gaming; Notice of Tribal-State Class III Gaming Compact Taking Effect in the State of New Mexico

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice.

SUMMARY: The Pueblo of San Felipe and State of New Mexico entered into a Tribal-State compact governing Class III gaming; this notice announces that the compact is taking effect.

DATES: Effective April 4, 2016.

FOR FURTHER INFORMATION CONTACT: Ms. Paula L. Hart, Director, Office of Indian Gaming, Office of the Assistant Secretary—Indian Affairs, Washington, DC 20240, (202) 219–4066.

SUPPLEMENTARY INFORMATION: Section 11 of the Indian Gaming Regulatory Act (IGRA) requires the Secretary of the Interior to publish in the **Federal Register** notice of approved Tribal-State compacts that are for the purpose of engaging in Class III gaming activities on Indian lands. *See* Public Law 100–497, 25 U.S.C. 2701 *et seq.* All Tribal-State Class III compacts are subject to review and approval by the Secretary under 25 CFR 293.4. The Secretary took no action on the Pueblo of San Felipe–State of New Mexico compact within 45 days of its submission. Therefore, the compact is considered to have been approved, but only to the extent the compact is consistent with IGRA. *See* 25 U.S.C. 2710(d)(8)(C).

Dated: March 17, 2016.

Lawrence S. Roberts,

Acting Assistant Secretary—Indian Affairs.

[FR Doc. 2016–07620 Filed 4–1–16; 8:45 am]

BILLING CODE 4337–15–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

[167A2100DD/AAKC001030/ A0A501010.999900 253G]

Grant Availability to Federally Recognized Indian Tribes To Implement Traffic Safety Programs and Projects on Indian Reservations

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice.

SUMMARY: This notice is intended to inform federally-recognized Indian Tribes of the application process and due date for the Indian Highway Safety Program for Fiscal Year 2017. In accordance with Federal law and as authorized by the Secretary of Transportation, the Bureau of Indian Affairs, through its Indian Highway Safety Program (IHSP), will make funds available to federally recognized Indian Tribes on an annual basis for implementing traffic safety programs and projects that are designed to reduce the number of traffic crashes, death, injuries and property damage within Indian country. All project applications received on or before the deadline will be reviewed and selected on a competitive basis.

DATES: IHSP mailed application packets to all Tribal leaders by February 15, 2016. Applications for program and/or project funds must be received on or before May 2, 2016. Applications not received by the IHSP by close of business on May 2, 2016, will not be considered and will be returned unopened.

ADDRESSES: Each Tribe must submit their application to the Bureau of Indian Affairs, Office of Justice Services, Attention: Indian Highway Safety Program Director, 1001 Indian School NE., Suite 251, Albuquerque, New Mexico 87104.

FOR FURTHER INFORMATION CONTACT: Tribes should direct questions or requests for copies of the application packet to: Kimberly Belone, Indian Highway Safety Program, 1001 Indian School NE., Suite 251, Albuquerque, New Mexico 87104; telephone (505) 563–3900.

SUPPLEMENTARY INFORMATION:

Background

The Federal-Aid Highway Act of 1973 (Pub. L. 93–87) provides for U.S. Department of Transportation (DOT) funding, through the National Highway Traffic Safety Administration (NHTSA) to assist Indian Tribes in implementing traffic safety projects. Any program or project request must be designed to reduce the number of motor vehicle traffic crashes and their resulting fatalities, injuries, and property damage on Indian reservations and within Indian communities. Motor vehicle crashes are the leading cause of death to American Indians/Alaska Natives for ages 1 to 44. Nationwide, 511 American Indians/Alaska Natives were killed in motor vehicle crashes in 2013. Of this total, 180 died on reservations. For additional American Indians/Alaska Natives fatality data, you can access the NHTSA fatality Web site at: *http://www-*

nrd.nhtsa.dot.gov/departments/nrd-30/ncsa/STSI/NA_Report.htm.

This notice solicits applications from federally recognized Indian Tribes eligible to receive this assistance. Grant funds awarded to Tribes as a result of this announcement are reimbursed for eligible costs incurred under the terms of 23 U.S.C. 402 and subsequent amendments.

Responsibilities

For the purposes of application of this grant and the collection and distribution of the funds, Indian reservations are collectively considered a "State" and the Secretary of the Interior is considered the "Governor of a State." The Secretary of the Interior delegated the authority to administer the programs for all the Indian Tribes in the United States to the Assistant Secretary—Indian Affairs. The Assistant Secretary—Indian Affairs further delegated the responsibility for administration of the Indian Highway Safety Program to the Bureau of Indian Affairs, Office of Justice Services, located in Albuquerque, New Mexico. The Program Director of the IHSP has staff members available to provide program and technical assistance to Indian Tribes. The IHSP maintains contact with NHTSA with respect to program approval, funding, and technical assistance. NHTSA is responsible for ensuring that the IHSP is carried out in accordance with 23 CFR part 1200 and other applicable Federal statutes and regulations.

National Priority Program Areas

The following highway safety program areas have been identified as priority program areas eligible for funding under 23 CFR 1200.11 on Tribal lands:

a. Impaired driving
b. Occupant protection
c. Traffic records

Other fundable program areas may be considered based upon well documented problem identification from the Tribes.

Indian Highway Safety Program Funding Areas

Proposals are being solicited for the following program areas:

1. *Impaired Driving:* Programs directed at reducing injuries and death attributed to impaired driving on the reservations such as: Selective traffic enforcement programs (STEP) to apprehend impaired drivers, specialized law enforcement training (such as standardized field sobriety testing), public information programs on alcohol/other drug use and driving, education programs for convicted DWI/DUI offenders, various youth alcohol education programs promoting traffic safety, DUI courts, and programs or projects directed toward judicial training. Proposals for projects that enhance the development and implementation of innovative programs to combat impaired driving are also solicited.

2. *Occupant Protection:* Programs directed at decreasing injuries and deaths attributed to the lack of safety belt and child restraint usage such as: Surveys to determine usage rates and to identify high-risk non-users, comprehensive programs to promote correct usage of child safety seats and other occupant restraints, enforcement of safety belt ordinances or laws, specialized training (*e.g.,* Operation Kids, traffic occupant protection strategies (TOPS), Standardized Child Passenger Safety Technician Training), and evaluations.

3. *Traffic Records:* Programs to help Tribes develop or update electronic traffic records systems which will assist with analysis of crash information, causational factors, and support joint efforts with other agencies to improve the Tribe's traffic records system.

Project Guidelines

Each Tribe that would like to be considered for funding in FY 2017 must fill out and submit the project application that was mailed to the Tribal leaders. Applications will adhere to the following guidelines:

(1) Problem Identification. Highway traffic safety problems shall be based upon accurate Tribal data. Data should be complete and accurate and should show problems and/or trends. These data should be available in Tribal enforcement and traffic crash records.

(2) Goals, Performance Measures and Strategies. Tribes must provide the overall goals of the project as well as a list of performance measures and strategies to be used to evaluate performance. All goals, performance measures and strategies must have base line numbers and will be expressed in clearly defined, time-framed, and measurable terms. (Example: To decrease alcohol related motor vehicle crashes by _% from the 2015 number of __ to __ by the end of FY17). Performance measures should be aggressive but attainable and based on available data and trends.

(3) Training. Training identified in the application must relate directly to the project being proposed.

(4) Equipment. Any equipment identified in the application must relate directly to the project being proposed.

(5) Line Item Budget. The activities to be funded must be outlined in detail according to the following object groups: Personnel services; travel and training, operating costs and equipment. All Tribes applying for grants must attach a copy of the Tribe's indirect cost rate to the application.

(6) Funding Requirements. With the enactment of the Fixing America's Surface Transportation Act (FAST Act), the IHSP is required, in order to receive funds, to certify, on behalf of the Tribes, that the program will meet certain conditions and comply with all applicable rules and regulations for administering a highway safety program. In addition to program oversight and technical assistance, the BIA must certify that it will implement the following activities in support of national highway safety goals:

a. Participate in the national law enforcement mobilizations;

b. Encourage sustained enforcement of impaired driving, occupant protection and speeding;

c. Conduct an annual safety belt survey in accordance with criteria established by the Secretary to measure safety belt usage rates; and

d. Develop data systems to provide timely and effective data analysis to support allocation of highway traffic safety resources.

(7) In order to comply with the provisions of the FAST Act and the State Certifications and Assurances, the IHSP will allocate funds on behalf of the Tribes to implement the provisions listed in (6) above. Copies of the State Certifications and Assurances are available upon request or at: *http://www.ecfr.gov/cgi-bin/text-idx?c=ecfr&rgn=div5&view=text&node=23:1.0.2.13.1&idno=23#ap23.1.1200_162.a.*

(8) Funding Length. Traffic safety program funding is designed primarily as the source of invention and motivation. As a result, all projects are funded for a 12 month period of time. This program is not intended for long term financial support of continuing and on-going operations.

(9) Project monitoring length may exceed the grant period in the cases where distribution of purchase equipment is necessary.

Certifications

A list of certifications is attached to the grant application and must be initialed to show acceptance by the Tribe. These certifications are required by the either the funding agency and/or the IHSP and include: Federal Funding Accountability and Transparency Act, Nondiscrimination, Drug Free Workplace Act of 1988, Equipment, Buy

America Act, Political Activity (Hatch Act), Federal Lobbying, Restriction of State Lobbying, Lower Tier Certification, and Policy to Ban Text Messaging While Driving.

Submission Deadline

Each Tribe must send its funding request on the appropriate application form to the BIA IHSP office in Albuquerque, New Mexico, by the close of business May 2, 2016. Request can be received by U.S. Mail or via email to: *indian_highway_safety@bia.gov.*

Selection Criteria

A selection committee will review and evaluate each application requesting funding. Each member of the selection committee, by assigning points to the following four criteria, will rank each of the proposals based on the following criteria:

Criterion (1), the General Information section will include information on the type of grant, location, population and size of reservation, type of law enforcement and pertinent contact information. (10 points maximum).

Criterion (2), the strength of the Problem Identification based on verifiable, current and applicable data to indicate the extent of the traffic safety problem. (45 points maximum).

Criterion (3), the quality of the proposed solution plan based on aggressive but attainable Performance Measures and Strategies. (35 points maximum).

Criterion (4), details on necessity and reasonableness of the budget requested. (10 points maximum).

Notification of the Selection

Once the selection committee concludes its evaluation, it will notify those Tribes it recommends for participation and funding by letter. Upon notification, each selected Tribe must provide a duly authorized Tribal resolution. The resolution must be on file before grants funds can be expended by or reimbursed to the Tribe.

Notification of Non-Selection

The Program Director will notify each Tribe of non-selection.

Uniform Administrative Requirements for Grant-In-Aid

Uniform grant administration procedures have been established on a national basis for all grant-in-aid programs by the Office of Management and Budget under 2 CFR part 200 "Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards" and the DOT under 2 CFR part 1201. NHTSA has codified uniform procedures for State Highway Safety Programs in 23 CFR part 1200. 2 CFR part 200 and the "Highway Safety Grant Funding Guidance for NHTSA Field Administered Grants are the established cost principles applicable to grants and contracts through BIA and with Tribal governments. A copy of the Grant Funding Policy document can be obtained from the BIA IHSP office or at *http://www.nhtsa.gov/About+NHTSA/Highway+Safety+Grant+Programs/HSGrantFunding_Guidance#_Toc363830148.* The BIA IHSP office has been established and is designated to establish operating procedures consistent with the applicable provisions of these rules and any others that govern these grant funds.

Auditing of Highway Safety Projects will be included in the Tribal A–133 single audit requirement. Copies of Tribal audits must be available for inspection by the highway safety program staff. Tribes must provide monthly program status reports and a corresponding reimbursement claim to the BIA Indian Highway Safety Program, 1001 Indian School, Suite 251, Albuquerque, New Mexico 87104, in order to be reimbursed for program costs. These are to be submitted no later than 15 working days beyond the reporting month.

Project Monitoring

During the program year, it is the responsibility of the BIA IHSP office to review the implementation of Tribal traffic safety plans and programs, monitor the progress of their activities and expenditures and provide technical assistance as needed. This assistance may be on-site, by telephone, and/or a review of monthly progress claims.

Project Evaluation

Each project funded is required to submit an annual report that meets the minimum criteria as set forth in 23 CFR part 1200.35. This information will be contained in the annual report that is required to be submitted to NHTSA. The BIA IHSP will conduct an annual performance evaluation for each Highway Safety Project funded. Pursuant to 23 CFR part 1200.35, the evaluation will measure the actual accomplishments to the planned activity and how the project and activities funded contributed to the overall goal of the IHSP. Program staff will evaluate progress from baseline data as reported by the Tribe. BIA IHSP staff will evaluate the project on-site at the discretion of the IHSP Director.

Dated: March 21, 2016.

Lawrence S. Roberts,

Acting Assistant Secretary—Indian Affairs.

[FR Doc. 2016–07634 Filed 4–1–16; 8:45 am]

BILLING CODE 4337–15–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–SERO–NCPTT–20415; PPWOCRADS2][PCU00PT14.GT0000]

Request for Nominations for the Preservation Technology and Training Board

AGENCY: National Park Service, Interior.

ACTION: Request for nominations.

SUMMARY: The National Park Service (NPS), U.S. Department of the Interior, proposes to appoint new members to the Preservation Technology and Training Board (Board). The NPS is requesting nominations for qualified persons to serve as members of the Board.

DATES: Written nominations must be received by May 4, 2016.

ADDRESSES: Kirk A. Cordell, Executive Director, National Center for Preservation Technology and Training, National Park Service, 645 University Parkway, Natchitoches, LA 71457, by telephone (318) 356–7444. In addition to U.S. mail or commercial delivery, written comments may be sent by fax to Mr. Cordell at (318) 356–9119, or submitted electronically on the center Web site: *ncptt@nps.gov.*

FOR FURTHER INFORMATION CONTACT: Kirk A. Cordell, Executive Director, National Center for Preservation Technology and Training, National Park Service, 645 University Parkway, Natchitoches, LA 71457, by telephone (318) 356–7444.

SUPPLEMENTARY INFORMATION: The Board, established by Title IV, Section 404 of Public Law 102–575, October 30, 1992 (54 U.S.C. 305303), provides advice and professional oversight to the Secretary of the Interior and the National Center for Preservation Technology and Training regarding the activities of the Center.

Established within the Department of the Interior, the National Center for Preservation Technology and Training is located at Northwestern State University of Louisiana in Natchitoches, Louisiana. Title IV, Section 404 of Public Law 102–575, October 30, 1992, established the Board to provide advice and professional oversight to the Secretary of the Interior and the Center regarding the activities of the Center and to submit an annual report to the President and the Congress.

The Board is comprised of 13 members appointed for 4-year terms, as follows: (a) one member serving as the Secretary's designee; (b) six members who represent appropriate Federal, State, and local agencies, State and local historic preservation commissions, and other public and international organizations; and (c) six members on the basis of outstanding professional qualifications who represent major organizations in the fields of archeology, architecture, conservation, curation, engineering, history, historic preservation, landscape architecture, planning, or preservation education.

We are currently seeking one member serving as the Secretary's designee; and members appointed on the basis of outstanding professional qualifications who represent major organizations in the fields of archeology, architecture, conservation, curation, engineering, history, historic preservation, landscape architecture, planning, or preservation education.

Nominations should be typed and should include a resume providing an adequate description of the nominee's qualifications, including information that would enable the Department of the Interior to make an informed decision regarding meeting the membership requirements of the Board and permit the Department of the Interior to contact a potential member.

Members of the Board serve without compensation. However, while away from their homes or regular places of business in the performance of services for the Board as approved by the Designated Federal Officer, members may be allowed travel expenses, including per diem in lieu of subsistence, in the same manner as persons employed intermittently in Government service are allowed such expenses under Section 5703 of Title 5 of the United States Code.

Individuals who are Federally registered lobbyists are ineligible to serve on all Federal Advisory Committee Act (FACA) and non-FACA boards, committees, or councils in an individual capacity. The term "individual capacity" refers to individuals who are appointed to exercise their own individual best judgment on behalf of the government, such as when they are designated Special Government Employees, rather than being appointed to represent a particular interest.

Dated: March 15, 2016.

Alma Ripps,

Chief, Office of Policy.

[FR Doc. 2016–07493 Filed 4–1–16; 8:45 am]

BILLING CODE 4310–EE–P

DEPARTMENT OF THE INTERIOR

Bureau of Ocean Energy Management

[MMAA104000]

Notice of Intent To Reschedule Public Meetings for the Draft Programmatic Environmental Impact Statement for the Outer Continental Shelf (OCS) Oil and Gas Leasing Program: 2017–2022

AGENCY: Bureau of Ocean Energy Management (BOEM), Interior.

ACTION: Rescheduling of public meetings.

SUMMARY: BOEM is rescheduling meetings previously scheduled to be held in Washington, DC (April 4, 2016); Houston, TX (April 12, 2016); and New Orleans, LA (April 14, 2016) to elicit comments on the OCS Oil and Gas Leasing Program 2017–2022 Draft Programmatic Environmental Impact Statement (Draft Programmatic EIS), which has been prepared by BOEM to support the Proposed OCS Oil and Gas Leasing Program for 2017–2022 (2017–2022 Program). Rescheduled meetings will occur before the conclusion of the timeframe provided for public comments on the Draft Programmatic EIS (May 2, 2016). Rescheduled meetings will be announced through publication of a notice in the **Federal Register** and at *www.boemoceaninfo.com.* All other public meetings scheduled for comments on the Draft Programmatic EIS will be held on the dates and at the locations previously announced.

FOR FURTHER INFORMATION CONTACT: Jill Lewandowski, Ph.D., Bureau of Ocean Energy Management, 45600 Woodland Road VAM–OEP, Sterling, VA 20166; Dr. Lewandowski may also be reached by telephone at (703) 787–1703.

SUPPLEMENTARY INFORMATION:

Draft Programmatic EIS Availability: Persons interested in reviewing the Draft Programmatic EIS can download it on the Internet at *www.boemoceaninfo.com,* or may contact BOEM at the address provided above to request a paper copy or a CD/ROM version. Please specify if you wish a CD/ROM or paper copy. If neither is specified, a CD/ROM containing the Draft Programmatic EIS will be provided.

Library Availability: The Draft Programmatic EIS will also be available for review at libraries in states adjacent to the proposed lease sales. These libraries are listed at the Web site *www.boemoceaninfo.com.*

Public Meetings: The meetings previously scheduled to be held in Washington, DC (April 4, 2016), Houston, TX (April 12, 2016), and New Orleans, LA (April 14, 2016) to elicit comments on the Draft Programmatic EIS are being rescheduled. The rescheduled meetings will be announced through publication of a notice in the **Federal Register** and at *www.boemoceaninfo.com.* The rescheduled meetings will be held before the conclusion of the public comment period for the Draft Programmatic EIS (May 2, 2016).

All other public meetings will be held on the scheduled dates and at the locations previously announced:

- Alaska
    - ○ March 29, 2016; Kaktovik Community Center, 2051 Barter Avenue, Kaktovik, Alaska; 7:00–10:00 p.m.
    - ○ March 29, 2016; Northwest Arctic Borough Assembly Chambers, 163 Lagoon Street, Kotzebue, Alaska; 7:00–10:00 p.m.
    - ○ March 30, 2016; Inupiat Heritage Center, 5421 North Star Street, Barrow, Alaska; 7:00–10:00 p.m.
    - ○ March 30, 2016; Kisik Community Center, 2230 2nd Avenue, Nuiqsut, Alaska; 7:00–10:00 p.m.
    - ○ March 31, 2016; Kali School, 1029 Qasigiakik Street, Point Lay, Alaska; 3:00–6:00 p.m.
    - ○ March 31, 2016; City Qalgi Center, Point Hope, Alaska; 7:00–10:00 p.m.
    - ○ March 31, 2016; R. James Community Center, Wainwright, Alaska; 7:00–10:00 p.m.
    - ○ April 4, 2016; Morris Thompson Cultural & Visitors Center, 101 Dunkel Street, Fairbanks, Alaska; 7:00–10:00 p.m.
    - ○ April 5, 2016; Embassy Suites, 600 East Benson Boulevard, Anchorage, Alaska; 3:00–7:00 p.m.; free parking.
    - ○ April 6, 2016; Ninilchik School, 15735 Sterling Highway, Ninilchik, Alaska; 7:00–10:00 p.m.

Additional information: For additional information on the Draft Programmatic EIS and instructions on how to submit comments, please see the **Federal Register** notice published on March 18, 2016 (81 FR 14885).

Dated: March 29, 2016.

Abigail Ross Hopper,

Director, Bureau of Ocean Energy Management.

[FR Doc. 2016–07695 Filed 3–31–16; 11:15 am]

BILLING CODE 4310–MR–P

DEPARTMENT OF JUSTICE

[OMB Number 1121–0024]

Agency Information Collection Activities; Proposed eCollection eComments Requested; Claim for Death Benefits

AGENCY: Office of Justice Programs, Department of Justice.

ACTION: 30-day notice.

SUMMARY: The Department of Justice (DOJ), Office of Justice Programs (OJP), Bureau of Justice Assistance, will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. This proposed information collection was previously published in the **Federal Register** at 81 *FR* 1224, on January 11, 2016 allowing for a 60 day comment period.

DATES: Comments are encouraged and will be accepted for an additional 30 days until May 4, 2016.

FOR FURTHER INFORMATION CONTACT: If you have additional comments especially on the estimated public burden or associated response time, suggestions, or need a copy of the proposed information collection instrument with instructions or additional information, please contact Chris Casto by mail at Bureau of Justice Assistance, Office of Justice Programs, U.S. Department of Justice, 810 7th Street NW., Washington, DC 20531; or by email at *Chris.Casto@usdoj.gov.* Written comments and/or suggestions can also be directed to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention Department of Justice Desk Officer, Washington, DC 20503 or sent to *OIRA_submissions@omb.eop.gov.*

SUPPLEMENTARY INFORMATION: Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

—Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

—Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

—Enhance the quality, utility, and clarity of the information to be collected; and/or

—Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Overview of this information collection:

1. *Type of Information Collection:* Reinstatement with change of a previously approved collection

2. *The Title of the Form/Collection:* Claim for Death Benefits

3. *The agency form number:* None.

4. *Affected public who will be asked or required to respond, as well as a brief abstract:*

Primary: Eligible survivors of fallen public safety officers.

Abstract: BJA's Public Safety Officers' Benefits (PSOB) Office will use the PSOB Claim Form information to confirm the eligibility of applicants to receive Public Safety Officers' Death Benefits. Eligibility is dependent on several factors, including public safety officer status, an injury sustained in the line of duty, and the claimant status in the beneficiary hierarchy according to the PSOB Act. In addition, information to help the PSOB Office identify an individual is collected, such as Social Security numbers, telephone numbers, and email addresses. Changes to the claim form have been made in an effort to streamline the application process and eliminate requests for information that are either irrelevant or already being collected by other means.

Others: None.

5 *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* It is estimated that no more than 350 respondents will apply a year. Each application takes approximately 120 minutes to complete.

6 *An estimate of the total public burden (in hours) associated with the collection:* An estimate of the total public burden (in hours) associated with the collection: Total Annual Reporting Burden: 350 × 120 minutes per application = 42,000 minutes/by 60 minutes per hour = 700 hours.

If additional information is required contact: Jerri Murray, Department Clearance Officer, United States Department of Justice, Justice Management Division, Policy and Planning Staff, Two Constitution Square, 145 N Street NE., 3E.405B, Washington, DC 20530.

Dated: March 30, 2016.

Jerri Murray,

Department Clearance Officer for PRA, U.S. Department of Justice.

[FR Doc. 2016–07606 Filed 4–1–16; 8:45 am]

BILLING CODE 4410–18–P

DEPARTMENT OF JUSTICE

[OMB Number 1121–0025]

Agency Information Collection Activities; Proposed eCollection eComments Requested; Report of Public Safety Officers Death Benefits

AGENCY: Office of Justice Programs, Department of Justice.

ACTION: 30-day notice.

SUMMARY: The Department of Justice (DOJ), Office of Justice Programs (OJP), Bureau of Justice Assistance, will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. This proposed information collection was previously published in the **Federal Register** at 81 *FR* 1223 on January 11, 2016 allowing for a 60 day comment period.

DATES: Comments are encouraged and will be accepted for an additional 30 days until May 4, 2016.

FOR FURTHER INFORMATION CONTACT: If you have additional comments especially on the estimated public burden or associated response time, suggestions, or need a copy of the proposed information collection instrument with instructions or additional information, please contact Chris Casto by mail at Bureau of Justice Assistance, Office of Justice Programs, U.S. Department of Justice, 810 7th Street NW., Washington, DC 20531; or by email at *Chris.Casto@usdoj.gov.* Written comments and/or suggestions can also be directed to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention Department of Justice Desk Officer, Washington, DC 20503 or sent to *OIRA_submissions@omb.eop.gov.*

SUPPLEMENTARY INFORMATION: Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

—Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

—Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

—Enhance the quality, utility, and clarity of the information to be collected; and/or

—Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Overview of This Information Collection

1. *Type of Information Collection:* Reinstatement with change of a previously approved collection

2. *The Title of the Form/Collection:* Report of Public Safety Officers Death Benefits

3. *The agency form number:* None.

4. *Affected public who will be asked or required to respond, as well as a brief abstract:*

Primary: Public safety agencies experiencing the death of a public safety officer according to the PSOB Act.

Abstract: BJA's Public Safety Officers' Benefits (PSOB) Office will use the PSOB Report of Public Safety Officer's Death Form information to confirm the eligibility of applicants to receive Public Safety Officers' Death Benefits. Eligibility is dependent on several factors, including public safety officer status, an injury sustained in the line of duty, and the claimant status in the beneficiary hierarchy according to the PSOB Act. In addition, information to help the PSOB Office identify an individual is collected, such as Social Security numbers, telephone numbers, and email addresses. Changes to the report form have been made in an effort to streamline the application process and eliminate requests for information that are either irrelevant or already being collected by other means.

Others: None.

5. *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* It is estimated that no more than 350 respondents will apply a year. Each application takes approximately 240 minutes to complete.

6. *An estimate of the total public burden (in hours) associated with the collection:* An estimate of the total public burden (in hours) associated with the collection: Total Annual Reporting Burden: 350 × 240 minutes per application = 84,000 minutes/by 60 minutes per hour = 1400 hours.

If additional information is required contact: Jerri Murray, Department Clearance Officer, United States Department of Justice, Justice Management Division, Policy and Planning Staff, Two Constitution Square, 145 N Street NE., 3E.405B, Washington, DC 20530.

Dated: March 30, 2016.

Jerri Murray,

Department Clearance Officer for PRA, U.S. Department of Justice.

[FR Doc. 2016–07607 Filed 4–1–16; 8:45 am]

BILLING CODE 4410–18–P

DEPARTMENT OF JUSTICE

[OMB Number 1121–0166]

Agency Information Collection Activities; Proposed eCollection eComments Requested; Report of Public Safety Officers Permanent and Total Disability

AGENCY: Office of Justice Programs, Department of Justice.

ACTION: 30-Day notice.

SUMMARY: The Department of Justice (DOJ), Office of Justice Programs (OJP), Bureau of Justice Assistance, will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. This proposed information collection was previously published in the **Federal Register** at 81 *FR* 1212 on January 11, 2016 allowing for a 60 day comment period.

DATES: Comments are encouraged and will be accepted for an additional 30 days until May 4, 2016.

FOR FURTHER INFORMATION CONTACT: If you have additional comments especially on the estimated public burden or associated response time, suggestions, or need a copy of the proposed information collection instrument with instructions or additional information, please contact Chris Casto by mail at Bureau of Justice Assistance, Office of Justice Programs, U.S. Department of Justice, 810 7th Street NW., Washington, DC 20531; or by email at *Chris.Casto@usdoj.gov.* Written comments and/or suggestions can also be directed to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention Department of Justice Desk Officer, Washington, DC 20503 or sent to *OIRA_submissions@omb.eop.gov.*

SUPPLEMENTARY INFORMATION: Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

—Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

—Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

—Enhance the quality, utility, and clarity of the information to be collected; and/or

—Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Overview of This Information Collection

1. *Type of Information Collection:* Reinstatement with change of a previously approved collection

2. *The Title of the Form/Collection:* Report of Public Safety Officers Permanent and Total Disability

3. *The agency form number:* None.

4. *Affected public who will be asked or required to respond, as well as a brief abstract:*

Primary: Public safety officers who were permanently and totally disabled in the line of duty.

Abstract: BJA's Public Safety Officers' Benefits (PSOB) Office will use the PSOB Disability Application information to confirm the eligibility of applicants to receive Public Safety Officers' Disability Benefits. Eligibility is dependent on several factors, including public safety officer status, injury sustained in the line of duty, and the total and permanent nature of the line of duty injury. In addition, information to help the PSOB Office identify individuals is collected, such as Social Security numbers, telephone numbers, and email addresses. Changes to the application form have been made in an effort to streamline the application process and eliminate requests for information that are either irrelevant or already being collected by other means.

Others: None.

5. *An estimate of the total number of respondents and the amount of time*

estimated for an average respondent to respond: It is estimated that no more than 100 respondents will apply a year. Each application takes approximately 300 minutes to complete.

6. *An estimate of the total public burden (in hours) associated with the collection:* An estimate of the total public burden (in hours) associated with the collection: Total Annual Reporting Burden: 100 × 300 minutes per application = 30,000 minutes/by 60 minutes per hour = 500 hours.

If additional information is required contact: Jerri Murray, Department Clearance Officer, United States Department of Justice, Justice Management Division, Policy and Planning Staff, Two Constitution Square, 145 N Street NE., 3E.405B, Washington, DC 20530.

Dated: March 30, 2016.

Jerri Murray,

Department Clearance Officer for PRA, U.S. Department of Justice.

[FR Doc. 2016–07608 Filed 4–1–16; 8:45 am]

BILLING CODE 4410–18–P

DEPARTMENT OF JUSTICE

[OMB Number 1121–0321]

Agency Information Collection Activities; Proposed eCollection eComments Requested; National Institute of Justice Compliance Testing Program

AGENCY: Office of Justice Programs, DOJ.

ACTION: 30-Day notice.

SUMMARY: The Department of Justice (DOJ), Office of Justice Programs (OJP), National Institute of Justice (NIJ) will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. This proposed information collection was previously published in the **Federal Register** at 81 *FR* 2911, on January 19, 2016, allowing for a 60 day comment period.

DATES: Comments are encouraged and will be accepted for an additional 30 days until May 4, 2016.

FOR FURTHER INFORMATION CONTACT: If you have additional comments especially on the estimated public burden or associated response time, suggestions, or need a copy of the proposed information collection instrument with instructions or additional information, please contact Michael O'Shea (202) 305–7954, National Institute of Justice (NIJ), Office of Justice Programs, U.S. Department of Justice, 810 Seventh Street NW., Washington, DC 20531 or *Jamie.phillips@justnet.org.* Written comments and/or suggestions can also be directed to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention Department of Justice Desk Officer, Washington, DC 20503 or sent to *OIRA_submissions@omb.eop.gov.*

SUPPLEMENTARY INFORMATION: Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

—Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

—Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

—Enhance the quality, utility, and clarity of the information to be collected; and/or

—Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Overview of This Information Collection

1. *Type of Information Collection:* Revision of a currently approved collection.

2. *The Title of the Form/Collection:* National Institute of Justice Compliance Testing Program (NIJ CTP). This collection consists of eight forms: NIJ CTP Applicant Agreement; NIJ CTP Authorized Representatives Notification; NIJ CTP Body Armor Build Sheet; NIJ CTP Body Armor Agreement; NIJ CTP Manufacturing Location Notification; NIJ CTP Multiple Listee Notification; NIJ Approved Laboratory Application and Agreement; NIJ CTP Electronic Signature Agreement.

3. *The agency form number:* None.

4. *Affected public who will be asked or required to respond, as well as a brief abstract:*

Primary: Applicants to the NIJ Compliance Testing Program and Testing Laboratories. Other: None. The purpose of the voluntary NIJ Compliance Testing Program (CTP) is to provide confidence that equipment used for criminal justice applications meets minimum published performance requirements. One type of equipment is ballistic body armor. Ballistic body armor designs that are determined to meet minimum requirements by NIJ and listed on the NIJ Compliant Products List are eligible for purchase with grant funding through the Ballistic Vest Partnership.

5. *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* Total of 80 respondents estimated. *NIJ CTP Applicant Agreement:* Estimated 80 respondents at 1 hour each; *NIJ CTP Authorized Representatives Notification:* Estimated 25 respondents at 15 minutes each; *NIJ CTP Body Armor Build Sheet:* Estimated 60 respondents (estimated 150 responses) at 1 hour each; *NIJ CTP Body Armor Agreement:* Estimated 60 respondents (estimated 150 responses) at 15 minutes each; *NIJ CTP Manufacturing Location Notification:* Estimated 60 respondents (estimated 100 responses) at 15 minutes each; *NIJ CTP Multiple Listee Notification:* Estimated 60 respondents at 15 minutes each; *NIJ Approved Laboratory Application and Agreement:* Estimated 5 respondents at 1 hour each; NIJ CTP Electronic Signature Agreement: Estimated 60 Respondents at 10 minutes each.

6. *An estimate of the total public burden (in hours) associated with the collection:* The estimated total public burden associated with this information is 329 hours in the first year and 289 hours each subsequent year.

If additional information is required contact: Jerri Murray, Department Clearance Officer, United States Department of Justice, Justice Management Division, Policy and Planning Staff, Two Constitution Square, 145 N Street NE., 3E.405B, Washington, DC 20530.

Dated: March 30, 2016.

Jerri Murray,

Department Clearance Officer for PRA, U.S. Department of Justice.

[FR Doc. 2016–07609 Filed 4–1–16; 8:45 am]

BILLING CODE 4410–18–P

DEPARTMENT OF LABOR

Office of the Secretary

Agency Information Collection Activities; Submission for OMB Review; Comment Request; H–2A Temporary Employment Certification Program

ACTION: Notice.

SUMMARY: The Department of Labor (DOL) is submitting the Employment and Training Administration (ETA) sponsored information collection request (ICR) revision titled, "H–2A Temporary Employment Certification Program," to the Office of Management and Budget (OMB) for review and approval for use in accordance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501 *et seq.*). Public comments on the ICR are invited.

DATES: The OMB will consider all written comments that agency receives on or before May 4, 2016.

ADDRESSES: A copy of this ICR with applicable supporting documentation; including a description of the likely respondents, proposed frequency of response, and estimated total burden may be obtained free of charge from the RegInfo.gov Web site at *http://www.reginfo.gov/public/do/PRAViewICR?ref_nbr=201603-1205-001* (this link will only become active on the day following publication of this notice) or by contacting Michel Smyth by telephone at 202–693–4129, TTY 202–693–8064, (these are not toll-free numbers) or sending an email to *DOL_PRA_PUBLIC@dol.gov.*

Submit comments about this request by mail or courier to the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for DOL–ETA, Office of Management and Budget, Room 10235, 725 17th Street NW., Washington, DC 20503; by Fax: 202–395–5806 (this is not a toll-free number); or by email: *OIRA_submission@omb.eop.gov.* Commenters are encouraged, but not required, to send a courtesy copy of any comments by mail or courier to the U.S. Department of Labor-OASAM, Office of the Chief Information Officer, Attn: Departmental Information Compliance Management Program, Room N1301, 200 Constitution Avenue NW., Washington, DC 20210; or by email: *DOL_PRA_PUBLIC@dol.gov.*

FOR FURTHER INFORMATION CONTACT: Contact Michel Smyth by telephone at 202–693–4129, TTY 202–693–8064, (these are not toll-free numbers) or sending an email to *DOL_PRA_PUBLIC@dol.gov.*

Authority: 44 U.S.C. 3507(a)(1)(D).

SUPPLEMENTARY INFORMATION: This ICR seeks approval under the PRA for revisions to the H–2A Temporary Employment Certification Program. The Immigration and Nationality Act (INA) requires the Secretary of Labor to certify, among other things, that any foreign worker seeking to enter the United States (U.S.) to perform certain skilled or unskilled labor will not, by doing so, adversely affect wages and working conditions of U.S. workers similarly employed. The Secretary must also certify there are not sufficient U.S. workers able, willing, and qualified to perform such skilled or unskilled labor. Before any employer may petition for any temporary skilled or unskilled foreign workers, it must submit a request for certification to the Secretary containing the elements prescribed by the INA and regulations. This information collection has been classified as a revision, because the ETA has proposed changes to Appendix A to mirror the operational process implemented in the H–2B Temporary Employment Certification Program and to conform to the Department's H–2A Final Rule for employers seeking to hire temporary foreign workers for job opportunities in herding and production of livestock on the range. The Immigration and Nationality Act authorizes this information collection. *See* 8 U.S.C. 1011(a)(15)(H)(ii)(a) and 8 U.S.C. 1188.

This information collection is subject to the PRA. A Federal agency generally cannot conduct or sponsor a collection of information, and the public is generally not required to respond to an information collection, unless it is approved by the OMB under the PRA and displays a currently valid OMB Control Number. In addition, notwithstanding any other provisions of law, no person shall generally be subject to penalty for failing to comply with a collection of information that does not display a valid Control Number. *See* 5 CFR 1320.5(a) and 1320.6. The DOL obtains OMB approval for this information collection under Control Number 1205–0466. The DOL notes that existing information collection requirements submitted to the OMB receive a month-to-month extension while they undergo review. New requirements would only take effect upon OMB approval. For additional substantive information about this ICR, see the related notice published in the **Federal Register** on December 24, 2015 (80 FR 80387).

Interested parties are encouraged to send comments to the OMB, Office of Information and Regulatory Affairs at the address shown in the **ADDRESSES** section within thirty (30) days of publication of this notice in the **Federal Register**. In order to help ensure appropriate consideration, comments should mention OMB Control Number 1205–0466. The OMB is particularly interested in comments that:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Agency: DOL–ETA.

Title of Collection: H–2A Temporary Employment Certification Program.

OMB Control Number: 1205–0466.

Affected Public: Private Sector—businesses or other for-profits, farms, and not-for-profit institutions.

Total Estimated Number of Respondents: 4,870.

Total Estimated Number of Responses: 160,773.

Total Estimated Annual Time Burden: 49,194 hours.

Total Estimated Annual Other Costs Burden: $1,608,700.

Dated: March 28, 2016.

Michel Smyth,

Departmental Clearance Officer.

[FR Doc. 2016–07476 Filed 4–1–16; 8:45 am]

BILLING CODE 4510–FP–P

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

[Docket No. OSHA–2006–0028]

MET Laboratories, Inc.: Grant of Expansion of Recognition and Modification to the NRTL Program's List of Appropriate Test Standards

AGENCY: Occupational Safety and Health Administration (OSHA), Labor.

ACTION: Notice.

SUMMARY: In this notice, OSHA announces its final decision to expand the scope of recognition for MET Laboratories, Inc. as a Nationally Recognized Testing Laboratory (NRTL).

DATES: The expansion of the scope of recognition becomes effective on April 4, 2016.

FOR FURTHER INFORMATION CONTACT: Information regarding this notice is available from the following sources:

Press inquiries: Contact Mr. Frank Meilinger, Director, OSHA Office of Communications, U.S. Department of Labor, 200 Constitution Avenue NW., Room N–3647, Washington, DC 20210; telephone: (202) 693–1999; email: *meilinger.francis2@dol.gov.*

General and technical information: Contact Mr. Kevin Robinson, Director, Office of Technical Programs and Coordination Activities, Directorate of Technical Support and Emergency Management, Occupational Safety and Health Administration, U.S. Department of Labor, 200 Constitution Avenue NW., Room N–3655, Washington, DC 20210; telephone: (202) 693–2110; email: *robinson.kevin@dol.gov.* OSHA's Web page includes information about the NRTL Program (see *http://www.osha.gov/dts/otpca/nrtl/index.html*).

SUPPLEMENTARY INFORMATION:

I. Notice of Final Decision

OSHA hereby gives notice of the expansion of the scope of recognition of MET Laboratories, Inc. (MET), as an NRTL. MET's expansion covers the addition of five test standards to its scope of recognition. Additionally, OSHA announces a modification to the NRTL Program's List of Appropriate Test Standards to include three additional test standards.

OSHA recognition of an NRTL signifies that the organization meets the requirements specified by 29 CFR 1910.7. Recognition is an acknowledgment that the organization can perform independent safety testing and certification of the specific products covered within its scope of recognition and is not a delegation or grant of government authority. As a result of recognition, employers may use products properly approved by the NRTL to meet OSHA standards that require testing and certification of the products.

The Agency processes applications by an NRTL for initial recognition, or for expansion or renewal of this recognition, following requirements in Appendix A to 29 CFR 1910.7. This appendix requires that the Agency publish two notices in the **Federal Register** in processing an application. In the first notice, OSHA announces the application and provides its preliminary finding and, in the second notice, the Agency provides its final decision on the application. These notices set forth the NRTL's scope of recognition or modifications of that scope. OSHA maintains an informational Web page for each NRTL that details its scope of recognition. These pages are available from the Agency's Web site at *http://www.osha.gov/dts/otpca/nrtl/index.html.*

MET submitted five applications, two dated April 6, 2015, (OSHA–2006–0028–0020) and three dated May 29, 2015 (OSHA–2006–0028–0021), to expand its recognition to include five additional test standards, including three test standards to be added to the NRTL Program's List of Appropriate Test Standards. OSHA staff performed a detailed analysis of the application packets and reviewed other pertinent information. OSHA did not perform any on-site reviews in relation to this application.

OSHA published the preliminary notice announcing MET's expansion application and modification to the NRTL Program's List of Appropriate Test Standards in the **Federal Register** on January 22, 2016 (81 FR 3830). The Agency requested comments by February 8, 2016, but it received no comments in response to this notice. OSHA is now proceeding with this final notice to grant expansion of MET's scope of recognition and modification to the NRTL Program's List of Appropriate Test Standards.

To obtain or review copies of all public documents pertaining to MET's application, go to *www.regulations.gov* or contact the Docket Office, Occupational Safety and Health Administration, U.S. Department of Labor, 200 Constitution Avenue NW., Room N–2625, Washington, DC 20210. Docket No. OSHA–2006–0028 contains all materials in the record concerning MET's recognition.

II. Final Decision and Order

OSHA staff examined MET's expansion applications, its capability to meet the requirements of the test standards, and other pertinent information. Based on its review of this evidence, OSHA finds that MET meets the requirements of 29 CFR 1910.7 for expansion of its recognition, subject to the specified limitation and conditions listed below. OSHA, therefore, is proceeding with this final notice to grant MET's scope of recognition. OSHA limits the expansion of MET's recognition to testing and certification of products for demonstration of conformance to the test standards listed in Table 1 below.

Additionally, Table 2, below, lists the test standards new to the NRTL Program's List of Appropriate Test Standards. The Agency evaluated the standards to (1) verify they represent a product category for which OSHA requires certification by an NRTL, (2) verify the documents represent end products and not components, and (3) verify the documents define safety test specifications (not installation or operational performance specifications). Based on this evaluation, OSHA finds that they are appropriate test standards and has added these standards to the NRTL Program's List of Appropriate Test Standards.

TABLE 1—LIST OF APPROPRIATE TEST STANDARDS FOR INCLUSION IN MET'S NRTL SCOPE OF RECOGNITION

Test standard	Test standard title
UL 2738	Standard for Induction Power Transmitters and Receivers for Use with Low Energy Products.
UL 8750	Standard for Light Emitting Diode (LED) Equipment for Use in Lighting Products.
UL 8752*	Organic Light Emitting Diode (LED) Panels.
UL 2735*	Standard for Electric Utility Meters.
UL 2594*	Standard for Electric Vehicle Supply Equipment.

* Represents a new standard that OSHA is adding to the NRTL Program's List of Appropriate Test Standards, as specified in Table 2 below.

TABLE 2—TEST STANDARDS OSHA IS ADDING TO THE NRTL PROGRAM'S LIST OF APPROPRIATE TEST STANDARDS

Test standard	Test standard title
UL 2735	Standard for Electric Utility Meters.
UL 2594	Standard for Electric Vehicle Supply Equipment.
UL 8752	Organic Light Emitting Diode (LED) Panels.

OSHA's recognition of any NRTL for a particular test standard is limited to equipment or materials for which OSHA standards require third-party testing and certification before using them in the workplace. Consequently, if a test standard also covers any products for which OSHA does not require such testing and certification, an NRTL's scope of recognition does not include these products.

The American National Standards Institute (ANSI) may approve the test standards listed above as American National Standards. However, for convenience, we may use the designation of the standards-developing organization for the standard as opposed to the ANSI designation. Under the NRTL Program's policy (see OSHA Instruction CPL 1–0.3, Appendix C, paragraph XIV), any NRTL recognized for a particular test standard may use either the proprietary version of the test standard or the ANSI version of that standard. Contact ANSI to determine whether a test standard is currently ANSI-approved.

A. Conditions

In addition to those conditions already required by 29 CFR 1910.7, MET must abide by the following conditions of the recognition:

1. MET must inform OSHA as soon as possible, in writing, of any change of ownership, facilities, or key personnel, and of any major change in its operations as an NRTL, and provide details of the change(s);
2. MET must meet all the terms of its recognition and comply with all OSHA policies pertaining to this recognition; and
3. MET must continue to meet the requirements for recognition, including all previously published conditions on MET's scope of recognition, in all areas for which it has recognition.

Pursuant to the authority in 29 CFR 1910.7, OSHA hereby expands the scope of recognition of MET, subject to the limitation and conditions specified above, and adds three standards to the NRTL Program's List of Appropriate Test Standards..

Authority and Signature

David Michaels, Ph.D., MPH, Assistant Secretary of Labor for Occupational Safety and Health, 200 Constitution Avenue NW., Washington, DC 20210, authorized the preparation of this notice. Accordingly, the Agency is issuing this notice pursuant to 29 U.S.C. 657(g)(2), Secretary of Labor's Order No. 1–2012 (77 FR 3912, Jan. 25, 2012), and 29 CFR 1910.7.

Signed at Washington, DC, on March 29, 2016.

David Michaels,

Assistant Secretary of Labor for Occupational Safety and Health.

[FR Doc. 2016–07482 Filed 4–1–16; 8:45 am]

BILLING CODE 4510–26–P

LEGAL SERVICES CORPORATION

Agricultural Worker Population Estimates for Basic Field—Migrant Grants

AGENCY: Legal Services Corporation.

ACTION: Notice.

SUMMARY: The Legal Services Corporation (LSC) seeks public comment on alternative estimates of the LSC-eligible agricultural worker population in Michigan. LSC obtained current estimates of LSC-eligible agricultural worker populations from the United States Department of Labor's Employment Training Administration (ETA) for the states, territories, and DC in order to revise LSC's distribution of LSC Basic Field funding between legal services grants for serving (1) the eligible general population and (2) the eligible agricultural worker population. LSC published those estimates for comment and received suggestions for alternative estimates in Michigan. LSC is publishing the alternative Michigan estimates for public comment.

DATES: Comments must be submitted on or before May 19, 2016.

ADDRESSES: Written comments must be submitted to Mark Freedman, Senior Associate General Counsel, Legal Services Corporation, 3333 K St. NW., Washington, DC 20007–3522; 202–337–6519 (fax); *mfreedman@lsc.gov*. LSC prefers electronic submissions via email with attachments in Acrobat PDF format. Written comments sent to any other address or received after the end of the comment period may not be considered by LSC.

FOR FURTHER INFORMATION CONTACT: Mark Freedman, Senior Associate General Counsel, Legal Services Corporation, 3333 K St. NW., Washington, DC 20007–3522; 202–295–1623 (phone); 202–337–6519 (fax); *mfreedman@lsc.gov*.

SUPPLEMENTARY INFORMATION:

I. Background

The Legal Services Corporation (LSC) seeks public comment on alternative estimates of the population of agricultural workers and dependents in Michigan who are LSC-eligible. The Michigan Advocacy Program (MAP) submitted these alternatives for LSC to use in lieu of the estimates provided by the U.S. Department of Labor's Employment Training Administration (ETA). LSC intends to select estimates to use for distribution of appropriated Basic Field Programs funds between legal services grants in Michigan serving the (1) eligible general population (Basic Field—General) and (2) the eligible agricultural worker population (Basic Field—Migrant).

On February 3, 2015, LSC published a notice for comment in the **Federal Register** with the history and context of LSC's decision to update the estimates of the eligible agricultural worker population in all LSC geographic areas (including the 50 states, the District of Columbia, and many U.S. territories), 80 FR 5791, February 3, 2015. LSC published the ETA estimates and related information online at *www.lsc.gov/ag-worker-data*. In response to the comments received, LSC obtained revised estimates from ETA, which LSC published for comment on February 5, 2016, 81 FR 6295, Feb. 5, 2016. MAP submitted alternative estimates for Michigan in response to the 2016 notice. LSC has posted the comments and materials related to this topic at *www.lsc.gov/ag-worker-data*. The MAP materials are:

- Michigan Advocacy Project, Comments (March 21, 2016)
- Michigan Advocacy Project, Attachments (March 21, 2016)

II. Proposed Alternative Estimates

MAP submitted proposals increasing the estimate of the number of eligible agricultural workers and dependents in Michigan, including by:

1. Increasing the estimate of total agricultural workers from 80,549 to 87,870; and

2. Increasing the percentage of dependents who are eligible from 31% to 60%. MAP provides analysis supporting these proposals in its comments.

III. Request for Comments

LSC seeks comment solely on the specific MAP proposals enumerated above. Comments should specifically address the rationale provided by MAP in its comments.

Dated: March 29, 2016.

Stefanie K. Davis,

Assistant General Counsel.

[FR Doc. 2016–07526 Filed 4–1–16; 8:45 am]

BILLING CODE 7050–01–P

LIBRARY OF CONGRESS

Copyright Office

[Docket No. 2015–7]

Section 512 Study: Extension of Time To Submit Requests To Participate in Roundtable

AGENCY: U.S. Copyright Office, Library of Congress.

ACTION: Extension of time to submit requests to participate in roundtable.

SUMMARY: The United States Copyright Office is extending the deadline for the submission of requests to participate in the section 512 roundtables in New York and California, which were announced in its March 18, 2016 Notice of Inquiry. *See* 81 FR 14896.

DATES: Requests to participate in the section 512 roundtables are now due no later than 11:59 p.m. Eastern Time on April 11, 2016.

ADDRESSES: Those who seek to participate in the section 512 roundtables should complete and submit the form available through the Copyright Office's Web site at *http://www.copyright.gov/policy/section512/public-roundtable/participate-request.html.* If electronic submission of such a request is not feasible, please contact the Office using the contact information below for special instructions.

FOR FURTHER INFORMATION CONTACT: Jacqueline C. Charlesworth, General Counsel and Associate Register of Copyrights, *jcharlesworth@loc.gov;* or Karyn Temple Claggett, Director of the Office of Policy and International Affairs and Associate Register of Copyrights, *kacl@loc.gov.* Each can be reached by telephone at (202) 707–8350.

SUPPLEMENTARY INFORMATION: The United States Copyright Office is undertaking a public study to evaluate the impact and effectiveness of the DMCA safe harbor provisions contained in section 512 of Title 17. On March 18, 2016, the Office issued a Notice of Inquiry announcing two two-day public roundtables in New York, New York on May 2 and 3, 2016, and Stanford, California on May 12 and 13, 2016.

The roundtables will offer an opportunity for interested parties to comment further on the issues raised in the Office's December 31, 2015 Notice of Inquiry regarding section 512. *See* 80 FR 81862. Additional information about the specific topics to be covered at the roundtables is available at *http://www.copyright.gov/policy/section512/public-roundtable/participate-request.html.* To ensure that those interested in participating in the section 512 roundtables have sufficient time to submit a request, the Office is extending the deadline for such requests to April 11, 2016, at 11:59 p.m. Eastern Time.

Dated: March 29, 2016.

Maria A. Pallante,

Register of Copyrights, U.S. Copyright Office.

[FR Doc. 2016–07550 Filed 4–1–16; 8:45 am]

BILLING CODE 1410–30–P

NEIGHBORHOOD REINVESTMENT CORPORATION

Regular Board of Directors Meeting; Sunshine Act

TIME AND DATE: 10:00 a.m., Tuesday, April 12, 2016.

PLACE: NeighborWorks America—Gramlich Boardroom, 999 North Capitol Street NE., Washington DC 20002.

STATUS: Open (with the exception of Executive Session).

CONTACT PERSON: Jeffrey Bryson, EVP & General Counsel/Secretary, (202) 760–4101; *jbryson@nw.org.*

AGENDA:

I. CALL TO ORDER
II. Approval of Minutes
III. Executive Session: Audit Committee Report
IV. Executive Session: Report from CEO
V. Executive Session: Officer Performance Reviews
VI. Business Intelligence
VII. CypherWorx
VIII. Northern Trust
IX. Audit Update
X. Strategic Plan Perspectives
XI. Management Program Background & Updates
XII. Adjournment

The General Counsel of the Corporation has certified that in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c)(2), (4) and (6) permit closure of the following portions of this meeting:

- Audit Committee Report
- Report from CEO
- Officer Performance Reviews

Jeffrey T. Bryson,

EVP & General Counsel/Corporate Secretary.

[FR Doc. 2016–07785 Filed 3–31–16; 4:15 pm]

BILLING CODE 7570–02–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–333; NRC–2016–0071]

Entergy Nuclear Operations, Inc.; James A. FitzPatrick Nuclear Power Plant

AGENCY: Nuclear Regulatory Commission.

ACTION: License amendment application; withdrawal by applicant.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) has granted the request of Entergy Nuclear Operations, Inc. (Entergy, the licensee), to withdraw its application dated August 20, 2015, for a proposed amendment to Renewed Facility Operating License No. DPR–59, for the James A. FitzPatrick Nuclear Power Plant (JAF), located in Oswego County, New York. The proposed amendment would have revised the JAF Technical Specification (TS) to extend primary containment Type A and Type C leak rate test frequencies.

ADDRESSES: Please refer to Docket ID NRC–2016–0071 when contacting the NRC about the availability of information regarding this document. You may obtain publicly-available information related to this document using any of the following methods:

- *Federal Rulemaking Web site:* Go to *http://www.regulations.gov* and search for Docket ID NRC–2016–0071. Address questions about NRC dockets to Carol Gallagher; telephone: 301–415–3463; email: *Carol.Gallagher@nrc.gov.* For technical questions, contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.
- *NRC's Agencywide Documents Access and Management System (ADAMS):* You may obtain publicly-available documents online in the ADAMS Public Documents collection at *http://www.nrc.gov/reading-rm/adams.html.* To begin the search, select "*ADAMS Public Documents*" and then select "*Begin Web-based ADAMS Search.*" For problems with ADAMS,

please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737, or by email to *pdr.resource@nrc.gov.* The ADAMS accession number for each document referenced (if that document is available in ADAMS) is provided the first time that a document is referenced.

- *NRC's PDR:* You may examine and purchase copies of public documents at the NRC's PDR, Room O1–F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.

FOR FURTHER INFORMATION CONTACT: William Huffman, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–2046; email: *William.Huffman@nrc.gov.*

SUPPLEMENTARY INFORMATION: The NRC has granted the request of Entergy to withdraw its August 20, 2015, application (ADAMS Accession No. ML15232A761) for proposed amendment to Renewed Facility Operating License No. DPR–59 for the JAF, located in Oswego County, New York.

The amendment would have revised TS 5.5.6, "Primary Containment Leak Rate Testing Program," to allow permanent extension of the Type A Primary Containment Integrated Leak Rate Test interval to 15 years and to allow extension of Type C Local Leak Rate Test testing interval up to 75 months. Entergy withdrew the license amendment request because it intends to permanently cease power operations at JAF at the end of the current operating cycle and, therefore, no longer needs to change the primary containment leak rate test frequencies.

The Commission had previously issued a Notice of Consideration of Issuance of Amendment published in the **Federal Register** on October 13, 2015 (80 FR 61480). However, by letter dated March 14, 2016 (ADAMS Accession No. ML16074A371), the licensee requested to withdraw the proposed amendment.

Dated at Rockville, Maryland, this 29th day of March, 2016.

For the Nuclear Regulatory Commission.

William C. Huffman,

Project Manager, Plant Licensing IV–2 and Decommissioning Transition Branch, Division of Operating Reactor Licensing, Office of Nuclear Reactor Regulation.

[FR Doc. 2016–07639 Filed 4–1–16; 8:45 am]

BILLING CODE 7590–01–P

POSTAL REGULATORY COMMISSION

[Docket No. CP2014–38; Order No. 3182]

New Postal Product

AGENCY: Postal Regulatory Commission.

ACTION: Notice.

SUMMARY: The Commission is noticing a recent Postal Service filing concerning an amendment to Priority Mail Contract 80 negotiated service agreement. This notice informs the public of the filing, invites public comment, and takes other administrative steps.

DATES: *Comments are due:* April 5, 2016.

ADDRESSES: Submit comments electronically via the Commission's Filing Online system at *http://www.prc.gov.* Those who cannot submit comments electronically should contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section by telephone for advice on filing alternatives.

FOR FURTHER INFORMATION CONTACT: David A. Trissell, General Counsel, at 202–789–6820.

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Introduction
II. Notice of Filings
III. Ordering Paragraphs

I. Introduction

On March 24, 2016, the Postal Service filed notice that it has agreed to an amendment to the existing Priority Mail Contract 80 negotiated service agreement approved in this docket.[1] In support of its Notice, the Postal Service includes a redacted copy of the Amendment.

The Postal Service also filed the unredacted Amendment under seal. The Postal Service seeks to incorporate by reference the Application for Non-Public Treatment originally filed in this docket for the protection of information that it has filed under seal. Notice at 1.

The Amendment revises section I.G. of the Existing Agreement to include an alternative provision for adjusting prices in the last contract year. *Id.* Attachment A at 1.

The Postal Service intends for the Amendment to become effective two business days after the date that the Commission completes its review of the Notice. *Id.;* Notice at 1. The Postal Service asserts that the Amendment does not materially affect cost coverage; therefore, the supporting financial documentation and certification originally filed in this docket remain applicable. *Id.*

II. Notice of Filings

The Commission invites comments on whether the changes presented in the Postal Service's Notice are consistent with the policies of 39 U.S.C. 3632, 3633, or 3642, 39 CFR 3015.5, and 39 CFR part 3020, subpart B. Comments are due no later than April 5, 2016. The public portions of these filings can be accessed via the Commission's Web site (*http://www.prc.gov*).

The Commission appoints Natalie R. Ward to represent the interests of the general public (Public Representative) in this docket.

III. Ordering Paragraphs

It is ordered:

1. The Commission reopens Docket No. CP2014–38 for consideration of matters raised by the Postal Service's Notice.

2. Pursuant to 39 U.S.C. 505, the Commission appoints Natalie R. Ward to serve as an officer of the Commission (Public Representative) to represent the interests of the general public in this proceeding.

3. Comments are due no later than April 5, 2016.

4. The Secretary shall arrange for publication of this order in the **Federal Register**.

By the Commission.

Stacy L. Ruble,

Secretary.

[FR Doc. 2016–07519 Filed 4–1–16; 8:45 am]

BILLING CODE 7710–FW–P

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[1] Notice of United States Postal Service of Amendment to Priority Mail Contract 80, with Portions Filed Under Seal, March 24, 2016 (Notice). The amendment is an attachment to the Notice (Amendment).

POSTAL REGULATORY COMMISSION

[Docket Nos. MC2016–112 and CP2016–140; Order No. 3184]

New Postal Product

AGENCY: Postal Regulatory Commission.

ACTION: Notice.

SUMMARY: The Commission is noticing a recent Postal Service filing concerning the addition of Priority Mail & First-Class Package Service Contract 17 to the competitive product list. This notice informs the public of the filing, invites public comment, and takes other administrative steps.

DATES: *Comments are due:* April 5, 2016.

ADDRESSES: Submit comments electronically via the Commission's Filing Online system at *http://*

www.prc.gov. Those who cannot submit comments electronically should contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section by telephone for advice on filing alternatives.

FOR FURTHER INFORMATION CONTACT: David A. Trissell, General Counsel, at 202–789–6820.

SUPPLEMENTARY INFORMATION:

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I. Introduction
II. Notice of Commission Action
III. Ordering Paragraphs

I. Introduction

In accordance with 39 U.S.C. 3642 and 39 CFR 3020.30–.35, the Postal Service filed a formal request and associated supporting information to add Priority Mail & First-Class Package Service Contract 17 to the competitive product list.[1]

The Postal Service contemporaneously filed a redacted contract related to the proposed new product under 39 U.S.C. 3632(b)(3) and 39 CFR 3015.5. Request, Attachment B.

To support its Request, the Postal Service filed a copy of the contract, a copy of the Governors' Decision authorizing the product, proposed changes to the Mail Classification Schedule, a Statement of Supporting Justification, a certification of compliance with 39 U.S.C. 3633(a), and an application for non-public treatment of certain materials. It also filed supporting financial workpapers.

II. Notice of Commission Action

The Commission establishes Docket Nos. MC2016–112 and CP2016–140 to consider the Request pertaining to the proposed Priority Mail & First-Class Package Service Contract 17 product and the related contract, respectively.

The Commission invites comments on whether the Postal Service's filings in the captioned dockets are consistent with the policies of 39 U.S.C. 3632, 3633, or 3642, 39 CFR part 3015, and 39 CFR part 3020, subpart B. Comments are due no later than April 5, 2016. The public portions of these filings can be accessed via the Commission's Web site (*http://www.prc.gov*).

The Commission appoints Natalie R. Ward to serve as Public Representative in these dockets.

III. Ordering Paragraphs

It is ordered:

1. The Commission establishes Docket Nos. MC2016–112 and CP2016–140 to consider the matters raised in each docket.

2. Pursuant to 39 U.S.C. 505, Natalie R. Ward is appointed to serve as an officer of the Commission to represent the interests of the general public in these proceedings (Public Representative).

3. Comments are due no later than April 5, 2016.

4. The Secretary shall arrange for publication of this order in the **Federal Register**.

By the Commission.

Stacy L. Ruble,

Secretary.

[FR Doc. 2016–07521 Filed 4–1–16; 8:45 am]

BILLING CODE 7710–FW–P

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[1] Request of the United States Postal Service to Add Priority Mail & First-Class Package Service Contract 17 to Competitive Product List and Notice of Filing (Under Seal) of Unredacted Governors' Decision, Contract, and Supporting Data, March 25, 2016 (Request).

POSTAL REGULATORY COMMISSION

[Docket Nos. MC2016–109 and CP2016–137; Order No. 3183]

New Postal Product

AGENCY: Postal Regulatory Commission.

ACTION: Notice.

SUMMARY: The Commission is noticing a recent Postal Service filing concerning the addition of Priority Mail Contract 202 to the competitive product list. This notice informs the public of the filing, invites public comment, and takes other administrative steps.

DATES: *Comments are due:* April 5, 2016.

ADDRESSES: Submit comments electronically via the Commission's Filing Online system at *http://www.prc.gov.* Those who cannot submit comments electronically should contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section by telephone for advice on filing alternatives.

FOR FURTHER INFORMATION CONTACT: David A. Trissell, General Counsel, at 202–789–6820.

SUPPLEMENTARY INFORMATION:

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I. Introduction
II. Notice of Commission Action
III. Ordering Paragraphs

I. Introduction

In accordance with 39 U.S.C. 3642 and 39 CFR 3020.30–.35, the Postal Service filed a formal request and associated supporting information to add Priority Mail Contract 202 to the competitive product list.[1]

The Postal Service contemporaneously filed a redacted contract related to the proposed new product under 39 U.S.C. 3632(b)(3) and 39 CFR 3015.5. Request, Attachment B.

To support its Request, the Postal Service filed a copy of the contract, a copy of the Governors' Decision authorizing the product, proposed changes to the Mail Classification Schedule, a Statement of Supporting Justification, a certification of compliance with 39 U.S.C. 3633(a), and an application for non-public treatment of certain materials. It also filed supporting financial workpapers.

II. Notice of Commission Action

The Commission establishes Docket Nos. MC2016–109 and CP2016–137 to consider the Request pertaining to the proposed Priority Mail Contract 202 product and the related contract, respectively.

The Commission invites comments on whether the Postal Service's filings in the captioned dockets are consistent with the policies of 39 U.S.C. 3632, 3633, or 3642, 39 CFR part 3015, and 39 CFR part 3020, subpart B. Comments are due no later than April 5, 2016. The public portions of these filings can be accessed via the Commission's Web site (*http://www.prc.gov*).

The Commission appoints Gregory Stanton to serve as Public Representative in these dockets.

III. Ordering Paragraphs

It is ordered:

1. The Commission establishes Docket Nos. MC2016–109 and CP2016–137 to consider the matters raised in each docket.

2. Pursuant to 39 U.S.C. 505, Gregory Stanton is appointed to serve as an officer of the Commission to represent the interests of the general public in these proceedings (Public Representative).

3. Comments are due no later than April 5, 2016.

4. The Secretary shall arrange for publication of this order in the **Federal Register**.

By the Commission.

Stacy L. Ruble,

Secretary.

[FR Doc. 2016–07520 Filed 4–1–16; 8:45 am]

BILLING CODE 7710–FW–P

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[1] Request of the United States Postal Service to Add Priority Mail Contract 202 to Competitive Product List and Notice of Filing (Under Seal) of Unredacted Governors' Decision, Contract, and Supporting Data, March 25, 2016 (Request).

POSTAL REGULATORY COMMISSION

[Docket Nos. MC2016–111 and CP2016–139; Order No. 3181]

New Postal Product

AGENCY: Postal Regulatory Commission.

ACTION: Notice.

SUMMARY: The Commission is noticing a recent Postal Service filing concerning the addition of First-Class Package Service Contract 48 to the competitive product list. This notice informs the public of the filing, invites public comment, and takes other administrative steps.

DATES: *Comments are due:* April 5, 2016.

ADDRESSES: Submit comments electronically via the Commission's Filing Online system at *http://www.prc.gov.* Those who cannot submit comments electronically should contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section by telephone for advice on filing alternatives.

FOR FURTHER INFORMATION CONTACT: David A. Trissell, General Counsel, at 202–789–6820.

SUPPLEMENTARY INFORMATION:

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I. Introduction
II. Notice of Commission Action
III. Ordering Paragraphs

I. Introduction

In accordance with 39 U.S.C. 3642 and 39 CFR 3020.30-.35, the Postal Service filed a formal request and associated supporting information to add First-Class Package Service Contract 48 to the competitive product list.[1]

The Postal Service contemporaneously filed a redacted contract related to the proposed new product under 39 U.S.C. 3632(b)(3) and 39 CFR 3015.5. Request, Attachment B.

To support its Request, the Postal Service filed a copy of the contract, a copy of the Governors' Decision authorizing the product, proposed changes to the Mail Classification Schedule, a Statement of Supporting Justification, a certification of compliance with 39 U.S.C. 3633(a), and an application for non-public treatment of certain materials. It also filed supporting financial workpapers.

II. Notice of Commission Action

The Commission establishes Docket Nos. MC2016–111 and CP2016–139 to consider the Request pertaining to the proposed First-Class Package Service Contract 48 product and the related contract, respectively.

The Commission invites comments on whether the Postal Service's filings in the captioned dockets are consistent with the policies of 39 U.S.C. 3632, 3633, or 3642, 39 CFR part 3015, and 39 CFR part 3020, subpart B. Comments are due no later than April 5, 2016. The public portions of these filings can be accessed via the Commission's Web site (*http://www.prc.gov*).

The Commission appoints Jennaca D. Upperman to serve as Public Representative in these dockets.

III. Ordering Paragraphs

It is ordered:

1. The Commission establishes Docket Nos. MC2016–111 and CP2016–139 to consider the matters raised in each docket.

2. Pursuant to 39 U.S.C. 505, Jennaca D. Upperman is appointed to serve as an officer of the Commission to represent the interests of the general public in these proceedings (Public Representative).

3. Comments are due no later than April 5, 2016.

4. The Secretary shall arrange for publication of this order in the **Federal Register**.

By the Commission.

Stacy L. Ruble,

Secretary.

[FR Doc. 2016–07518 Filed 4–1–16; 8:45 am]

BILLING CODE 7710–FW–P

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[1] Request of the United States Postal Service to Add First-Class Package Service Contract 48 to Competitive Product List and Notice of Filing (Under Seal) of Unredacted Governors' Decision, Contract, and Supporting Data, March 25, 2016 (Request).

POSTAL REGULATORY COMMISSION

[Docket Nos. MC2016–110 and CP2016–138; Order No. 3193]

New Postal Product

AGENCY: Postal Regulatory Commission.

ACTION: Notice.

SUMMARY: The Commission is noticing a recent Postal Service filing concerning the addition of Priority Mail Contract 203 to the competitive product list. This notice informs the public of the filing, invites public comment, and takes other administrative steps.

DATES: *Comments are due:* April 5, 2016.

ADDRESSES: Submit comments electronically via the Commission's Filing Online system at *http://www.prc.gov.* Those who cannot submit comments electronically should contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section by telephone for advice on filing alternatives.

FOR FURTHER INFORMATION CONTACT: David A. Trissell, General Counsel, at 202–789–6820.

SUPPLEMENTARY INFORMATION:

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I. Introduction
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III. Ordering Paragraphs

I. Introduction

In accordance with 39 U.S.C. 3642 and 39 CFR 3020.30-.35, the Postal Service filed a formal request and associated supporting information to add Priority Mail Contract 203 to the competitive product list.[1]

The Postal Service contemporaneously filed a redacted contract related to the proposed new product under 39 U.S.C. 3632(b)(3) and 39 CFR 3015.5. Request, Attachment B.

To support its Request, the Postal Service filed a copy of the contract, a copy of the Governors' Decision authorizing the product, proposed changes to the Mail Classification Schedule, a Statement of Supporting Justification, a certification of compliance with 39 U.S.C. 3633(a), and an application for non-public treatment of certain materials. It also filed supporting financial workpapers.

II. Notice of Commission Action

The Commission establishes Docket Nos. MC2016–110 and CP2016–138 to consider the Request pertaining to the proposed Priority Mail Contract 203 product and the related contract, respectively.

The Commission invites comments on whether the Postal Service's filings in the captioned dockets are consistent with the policies of 39 U.S.C. 3632, 3633, or 3642, 39 CFR part 3015, and 39 CFR part 3020, subpart B. Comments are due no later than April 5, 2016. The public portions of these filings can be accessed via the Commission's Web site (*http://www.prc.gov*).

The Commission appoints Cassie D'Souza to serve as Public Representative in these dockets.

III. Ordering Paragraphs

It is ordered:

1. The Commission establishes Docket Nos. MC2016–110 and CP2016–138 to

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[1] Request of the United States Postal Service to Add Priority Mail Contract 203 to Competitive Product List and Notice of Filing (Under Seal) of Unredacted Governors' Decision, Contract, and Supporting Data, March 25, 2016 (Request).

consider the matters raised in each docket.

2. Pursuant to 39 U.S.C. 505, Cassie D'Souza is appointed to serve as an officer of the Commission to represent the interests of the general public in these proceedings (Public Representative).

3. Comments are due no later than April 5, 2016.

4. The Secretary shall arrange for publication of this order in the **Federal Register**.

By the Commission.

Stacy L. Ruble,

Secretary.

[FR Doc. 2016–07551 Filed 4–1–16; 8:45 am]

BILLING CODE 7710–FW–P

POSTAL REGULATORY COMMISSION

[Docket Nos. MC2016–108 and CP2016–136; Order No. 3185]

New Postal Product

AGENCY: Postal Regulatory Commission.

ACTION: Notice.

SUMMARY: The Commission is noticing a recent Postal Service filing concerning the addition of Priority Mail Contract 201 to the competitive product list. This notice informs the public of the filing, invites public comment, and takes other administrative steps.

DATES: *Comments are due:* April 5, 2016.

ADDRESSES: Submit comments electronically via the Commission's Filing Online system at *http://www.prc.gov.* Those who cannot submit comments electronically should contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section by telephone for advice on filing alternatives.

FOR FURTHER INFORMATION CONTACT: David A. Trissell, General Counsel, at 202–789–6820.

SUPPLEMENTARY INFORMATION:

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I. Introduction
II. Notice of Commission Action
III. Ordering Paragraphs

I. Introduction

In accordance with 39 U.S.C. 3642 and 39 CFR 3020.30–.35, the Postal Service filed a formal request and associated supporting information to add Priority Mail Contract 201 to the competitive product list.[1]

The Postal Service contemporaneously filed a redacted contract related to the proposed new product under 39 U.S.C. 3632(b)(3) and 39 CFR 3015.5. Request, Attachment B.

To support its Request, the Postal Service filed a copy of the contract, a copy of the Governors' Decision authorizing the product, proposed changes to the Mail Classification Schedule, a Statement of Supporting Justification, a certification of compliance with 39 U.S.C. 3633(a), and an application for non-public treatment of certain materials. It also filed supporting financial workpapers.

II. Notice of Commission Action

The Commission establishes Docket Nos. MC2016–108 and CP2016–136 to consider the Request pertaining to the proposed Priority Mail Contract 201 product and the related contract, respectively.

The Commission invites comments on whether the Postal Service's filings in the captioned dockets are consistent with the policies of 39 U.S.C. 3632, 3633, or 3642, 39 CFR part 3015, and 39 CFR part 3020, subpart B. Comments are due no later than April 5, 2016. The public portions of these filings can be accessed via the Commission's Web site (*http://www.prc.gov*).

The Commission appoints Curtis E. Kidd to serve as Public Representative in these dockets.

III. Ordering Paragraphs

It is ordered:

1. The Commission establishes Docket Nos. MC2016–108 and CP2016–136 to consider the matters raised in each docket.

2. Pursuant to 39 U.S.C. 505, Curtis E. Kidd is appointed to serve as an officer of the Commission to represent the interests of the general public in these proceedings (Public Representative).

3. Comments are due no later than April 5, 2016.

4. The Secretary shall arrange for publication of this order in the **Federal Register**.

By the Commission.

Stacy L. Ruble,

Secretary.

[FR Doc. 2016–07522 Filed 4–1–16; 8:45 am]

BILLING CODE 7710–FW–P

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[1] Request of the United States Postal Service to Add Priority Mail Contract 201 to Competitive Product List and Notice of Filing (Under Seal) of Unredacted Governors' Decision, Contract, and Supporting Data, March 25, 2016 (Request).

SECURITIES AND EXCHANGE COMMISSION

[Release No. SIPA–176; File No. SIPC–2016–01]

Securities Investor Protection Corporation; Order Approving the Determination of the Board of Directors of the Securities Investor Protection Corporation Not To Adjust for Inflation the Standard Maximum Cash Advance Amount and Notice of the Standard Maximum Cash Advance Amount

March 30, 2016.

I. Background

On February 17, 2016, the Securities Investor Protection Corporation ("SIPC") filed with the Securities and Exchange Commission ("Commission"), under sections 9(e)(1) and 3(e)(2)(A) of the Securities Investor Protection Act of 1970 ("SIPA"),[1] notification that SIPC's Board of Directors (the "SIPC Board") had determined that the standard maximum cash advance amount available to satisfy customer claims for cash in a SIPA liquidation proceeding would remain at $250,000 beginning January 1, 2017 and for the five-year period immediately thereafter. The Commission published for comment notice of the SIPC Board's determination in the **Federal Register** on February 25, 2016.[2] The Commission did not receive any comments. The Commission today is approving, by order, the SIPC Board's determination. The Commission is also publishing notice that the standard maximum cash advance amount will remain $250,000 beginning January 1, 2017 and for the five-year period immediately thereafter.

The Dodd-Frank Wall Street Reform and Consumer Protection Act (the "Dodd-Frank Act")[3] amended SIPA to raise the "standard maximum cash advance amount" from $100,000 to $250,000 per customer.[4] This aligned that amount with the maximum insurance amount provided by the Federal Deposit Insurance Corporation ("FDIC") to customers of a failed bank. The Dodd-Frank Act also amended SIPA to require the SIPC Board of Directors to determine, no later than January 1, 2011, and every five years thereafter, whether an inflation adjustment to the standard maximum cash advance amount available to satisfy customer claims in a SIPA liquation proceeding is appropriate.[5] Any adjustment to the standard maximum cash advance amount takes effect on January 1 of the year immediately succeeding the calendar year in which the adjustment is made.[6] The SIPC Board's determination on whether to make an adjustment is subject to Commission approval as provided under section 3(e)(2) of SIPA.[7] The Commission must publish notice of the standard maximum cash advance amount in the **Federal Register** no later than April 5 of any calendar year in which SIPC is required to determine whether an inflation adjustment is appropriate.[8]

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[1] *See* 15 U.S.C. 78fff–3(e)(1) and 15 U.S.C. 78ccc(e)(2)(A), respectively.

[2] *See Securities Investor Protection Corporation,* Release No. SIPA–174 (Feb. 22, 2016), 81 FR 9561 (Feb. 25, 2016). The notice set forth SIPC's statement of the purpose and statutory basis of the determination of the SIPC Board not to adjust the standard maximum cash advance amount for inflation (the "February 17, 2016 SIPC Statement of Purpose"), which was attached to a letter from SIPC to the Commission, dated February 17, 2016.

[3] Public Law 111–203, 124 Stat. 1376 (July 21, 2010).

[4] In a liquidation of a broker-dealer performed under SIPA, a fund of customer property is established for priority distribution to customers ahead of all other creditors. Each customer is entitled to a pro rata share of the customer property to the extent of the customer's net equity in the customer's account. If the amount of customer

II. Determination of the SIPC Board Not To Adjust the Standard Maximum Cash Advance Amount

SIPC filed with the Commission on February 17, 2016 notification that the SIPC Board had determined not to raise the standard maximum cash advance amount above $250,000, and thereby maintain it at that level beginning January 1, 2017 and for the five-year period immediately thereafter.[9] In its February 17 filing, SIPC stated that applying the formula prescribed by SIPA in this instance would have increased the standard maximum cash advance amount by $20,000 and that the SIPC Board weighed the factors it considered in making its determination against an increase of that amount. However, for the reasons discussed below, the SIPC Board determined not to make the inflation adjustment.

SIPC described the factors the SIPC Board considered in making the determination to maintain the standard maximum cash advance amount at $250,000, including factors that it was required to consider under SIPA.[10] In particular, the SIPC Board considered data and a related SIPC staff analysis examining broker-dealers' aggregate leverage, liquidity, default risk, and the aggregate number of customer free credit balances. The analysis concluded that the SIPC fund is positioned to remain on a steady growth path for the foreseeable future, barring any unforeseen catastrophic event.

The SIPC Board also considered that, of the more than 625,000 allowed claims in completed or substantially completed liquidation proceedings as of December 31, 2014, the unsatisfied portion of cash claims amounted to $25 million. More than half of that amount related to only three claims that were submitted when the limit of protection for cash claims was less than the current $250,000. In the six SIPA proceedings initiated since 2010, the year the standard maximum cash advance amount was raised, SIPC has advanced funds for only one customer cash claim where the claim (but not the advance) exceeded $250,000.

The SIPC Board also considered that customer credit balances at brokerage firms had decreased at the end of 2013 and 2014, and that due to broker-dealers' offer of overnight "sweep" programs, customer free credit balances were being moved to bank accounts, with the protection of such accounts thereby transferred to the FDIC.

Further, the SIPC Board considered the relationship between the amount of the SIPC standard maximum cash advance amount and the maximum amount of protection afforded by the FDIC to customers of a failed bank. Increases to the limit of protection for cash claims under SIPA historically have moved in lockstep with increases in FDIC deposit insurance. The SIPC Board considered that FDIC deposit insurance is currently $250,000. The SIPC Board concluded that, on balance, in light of the unprecedented break with the FDIC limit that would result, with possibly harmful consequences, and the absence of evidence that an appreciable number of investors would be benefited, an adjustment to the limit of protection for cash claims in a SIPA liquidation proceeding would not be appropriate.[11]

III. Discussion and Commission Order

Section 3(e)(2)(A) of SIPA provides that the SIPC Board must file with the Commission any proposed amendment to a SIPC Rule.[12] Section 3(e)(2)(B) of SIPA provides that within thirty-five days of the date of publication of the notice of filing of a proposed rule change in the **Federal Register**, or within such longer period (1) as the Commission may designate of not more than ninety days after such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (2) as to which SIPC consents, the Commission shall: (i) By order approve such proposed rule change or (ii) institute proceedings to determine whether such proposed rule change should be disapproved. Further, section 3(e)(2)(D) of SIPA provides that the Commission shall approve a proposed rule change if it finds that the proposed rule change is in the public interest and is consistent with the purposes of SIPA.[13] The SIPC Board's determination to not adjust the standard maximum cash advance amount is subject to the approval of the Commission as provided under section 3(e)(2) of SIPA.[14]

The Commission finds, pursuant to section 3(e)(2)(D) of SIPA, that the determination of the SIPC Board not to adjust for inflation the standard maximum cash advance amount of $250,000 beginning January 1, 2017 and for the five-year period immediately thereafter is in the public interest and consistent with the purposes of SIPA. The Commission believes that maintaining the amount at $250,000 at this time to keep it aligned with the maximum amount of insurance provided by the FDIC is appropriate. For example, there could be unintended consequences resulting from raising the amount to a level that is higher than the maximum FDIC insurance amount, such as incentivizing investors to move additional funds to their brokerage accounts from bank accounts. Moreover, the Commission believes that maintaining the standard maximum cash advance amount at $250,000 is consistent with the public interest in light of the statistics considered by the SIPC Board that indicated that customer

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property is insufficient to satisfy a customer's net equity claim, SIPC advances money to satisfy the claim up to $500,000 per customer, of which up to $250,000 (*i.e.*, the standard maximum cash advance amount) can be used to satisfy a claim for cash. *See* 15 U.S.C. 78fff–3.

[5] 15 U.S.C. 78fff–3(e)(1). For reasons discussed in the February 17, 2016 SIPC Statement of Purpose, SIPC did not make such a determination on January 1, 2011. *See Securities Investor Protection Corporation*, 81 FR 9561.

[6] 15 U.S.C. 78fff–3(e)(4).

[7] *See* 15 U.S.C. 78ccc(e)(2); 15 U.S.C. 78fff–3(e)(1).

[8] 15 U.S.C. 78fff–3(e)(3)(A).

[9] *See* February 17, 2016 SIPC Statement of Purpose. As stated above, any adjustment to the standard maximum cash advance amount takes effect on January 1 of the year immediately succeeding the calendar year in which such an adjustment is made. *See* 15 U.S.C. 78fff–3(e)(4). Therefore, the SIPC Board's determination to maintain the standard maximum cash advance amount at $250,000 takes effect on January 1, 2017.

[10] The SIPC Board is required to consider the following criteria under SIPA: (1) The overall state of the fund and the economic conditions affecting members of SIPC; (2) the potential problems affecting members of SIPC; and (3) such other factors as the SIPC Board may determine appropriate. *See* 15 U.S.C. 78fff–3(e)(5).

[11] *See Securities Investor Protection Corporation*, Release No. SIPA–174 (Feb. 22, 2016), 81 FR 9561 (Feb. 25, 2016).

[12] 15 U.S.C. 78ccc(e)(2)(A).

[13] 15 U.S.C. 78ccc(e)(2)(D).

[14] 15 U.S.C. 78fff–3(e)(1).

claims for cash have been historically satisfied in full and the trend that customer credit balances at broker-dealers have been decreasing in recent years.[15]

It is therefore ordered, pursuant to section 3(e)(2) of SIPA, that the determination by the SIPC Board that the standard maximum cash advance amount will remain at $250,000 beginning January 1, 2017, and for the five-year period immediately thereafter, be and hereby is approved.

IV. Notice of the Standard Maximum Cash Advance Amount

SIPA requires that the Commission publish the standard maximum cash advance amount in the **Federal Register** no later than April 5 of any calendar year in which SIPC is required to determine whether an inflation adjustment is appropriate.[16] Accordingly, pursuant to section 9(e)(3)(A) of SIPA, the Commission is hereby providing notice that the standard maximum cash advance amount is $250,000 beginning January 1, 2017 and for the five-year period immediately thereafter.

By the Commission.

Brent J. Fields,

Secretary.

[FR Doc. 2016–07600 Filed 4–1–16; 8:45 am]

BILLING CODE 8011–01–P

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[15] *See* February 17, 2016 SIPC Statement of Purpose.

[16] 15 U.S.C. 78fff–3(e)(3)(A).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–77464; File Nos. SR–BATS–2016–10, SR–BYX–2016–02, SR–EDGX–2016–04, and SR–EDGA–2016–01]

Self-Regulatory Organizations; BATS Exchange, Inc., BATS Y-Exchange, Inc., EDGX Exchange, Inc., EDGA Exchange, Inc.; Order Approving Proposed Rule Changes To Amend and Restate the Certificate of Incorporation and Bylaws of the Exchanges' Ultimate Parent Company, BATS Global Markets, Inc.

March 29, 2016.

I. Introduction

On February 9, 2016, BATS Exchange, Inc. ("BATS"), BATS Y-Exchange, Inc. ("BYX"), EDGX Exchange, Inc. ("EDGX"), and EDGA Exchange, Inc. ("EDGA") (collectively, the "Exchanges" and each, an "Exchange") filed with the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"),[1] and Rule 19b–4 thereunder,[2] proposed rule changes to amend the certificate of incorporation (the "Current Certificate of Incorporation") and bylaws (the "Current Bylaws") of BATS Global Markets, Inc. (the "Corporation"), the Exchanges' ultimate parent company, in connection with the Corporation's anticipated initial public offering of shares of its common stock on BATS (the "IPO"). The proposed rule changes for EDGX and EDGA were published for comment in the **Federal Register** on February 22, 2016, and the proposed rule changes for BATS and BYX were published for comment in the **Federal Register** on February 23, 2016.[3] The Commission received no comment letters regarding the proposals. This order approves the proposed rule changes.

II. Description of the Proposal

On December 16, 2016, the Corporation filed a registration statement on Form S–1 with the Commission seeking to register shares of common stock and to conduct an initial public offering of those shares, which would be listed for trading on BATS. In connection with the IPO, the Exchanges filed a proposed rule change to amend and restate the Corporation's Current Certification of Incorporation and adopt those changes as the Corporation's Amended and Restated Certificate of Incorporation (the "New Certificate of Incorporation") and amend and restate the Corporation's Current Bylaws and adopt those changes as its Amended and Restated Bylaws (the "New Bylaws"). The Exchanges anticipate that the Corporation's New Certificate of Incorporation and New Bylaws will become effective the moment before the closing of the IPO.[4] According to the Exchanges, the proposed changes relate to the Corporation's governing documents only and do not relate to the governance of the Exchanges.[5]

A. The New Certificate of Incorporation

1. Capital Stock; Voting Rights

The Exchanges propose to revise the Current Certificate of Incorporation to reclassify all of the Corporation's existing stock as either "Voting Common Stock" or "Non-Voting Common Stock."[6] The Corporation expects that the outstanding Class A Non-Voting Common Stock will convert into Voting Common Stock upon the IPO, pursuant to the terms of the Investor Rights Agreement dated January 31, 2014, among the Corporation and its stockholders signatory thereto.[7] To effect this conversion, the New Certificate of Incorporation states that, at the time that the New Certificate of Incorporation becomes effective, each authorized, issued, and outstanding share of Class A Non-Voting Common Stock shall be automatically converted into one share of Voting Common Stock.[8] In addition, the New Certificate of Incorporation would reclassify each authorized, issued, and outstanding share of Class B Non-Voting Common Stock into one share of Non-Voting Common Stock.[9]

Except for voting rights [10] and certain conversion features,[11] the Exchanges propose that Non-Voting Common Stock and Voting Common Stock would generally rank equally and have identical rights and privileges.[12]

2. Board of Directors

The New Certificate of Incorporation would establish a "staggered" or classified board structure in which the Corporation's directors would be divided into three classes of equal size, to the extent possible.[13] Under the proposed board structure, only one class of directors would be elected each year, and once elected, directors would serve a three-year term.[14] Pursuant to the New

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[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release Nos. 77147 (February 16, 2016), 81 FR 8767 (February 22, 2016) (SR–EDGX–2016–04) ("EDGX Notice"); 77146 (February 16, 2016), 81 FR 8788 (February 22, 2016) (SR–EDGA–2016–01) ("EDGA Notice"); 77155 (February 17, 2016), 81 FR 9008 (February 23, 2016) (SR–BATS–2016–10) ("BATS Notice"); and 77156 (February 17, 2016), 81 FR 9052 (February 23, 2016) (SR–BYX–2016–02) ("BYX Notice").

[4] *See* EDGX Notice, *supra* note 3, at 8767; EDGA Notice, *supra* note 3, at 8788; BATS Notice, *supra* note 3, at 9008; and BYX Notice, *supra* note 3, at 9053.

[5] *See id.*

[6] *See generally* proposed Article Fourth of the New Certificate of Incorporation.

[7] *See* EDGX Notice, *supra* note 3, at 8768; EDGA Notice, *supra* note 3, at 8789; BATS Notice, *supra* note 3, at 9009; and BYX Notice, *supra* note 3, at 9053.

[8] *See* proposed Article Fourth(b)(i) of the New Certificate of Incorporation.

[9] *See* proposed Article Fourth(b)(ii) of the New Certificate of Incorporation.

[10] *See generally* proposed Article Fourth(c) of the New Certificate of Incorporation.

[11] *See generally* proposed Article Fourth(d) of the New Certificate of Incorporation.

[12] *See* EDGX Notice, *supra* note 3, 8768; EDGA Notice, *supra* note 3, at 8789; BATS Notice, *supra* note 3, at 9009; and BYX Notice, *supra* note 3, at 9054.

[13] *See* proposed Article Sixth(c) of the New Certificate of Incorporation.

[14] *Id.* Directors initially designated as Class I directors would serve for a term ending on the date of the 2017 annual meeting of stockholders, directors initially designated as Class II directors

Certificate of Incorporation, cumulative voting in the election of directors would be prohibited.[15] According to the Exchanges, cumulative voting is not appropriate for the ultimate parent company of a national securities exchange because it would increase the likelihood that a stockholder or group of stockholders holding a minority of voting shares might be able to exert an outsized influence in the election of directors of the Corporation, relative to its stockholdings in the Corporation.[16] As a result, the Exchanges state that cumulative voting could undermine the limitations on concentrations of ownership or voting included in both the Current Certificate of Incorporation and New Certificate of Incorporation.[17]

3. Transfer, Ownership, and Voting Restrictions

According to the Exchanges, the New Certificate of Incorporation maintains and enhances the limitations on aggregate ownership and total voting power that exist under the Current Certificate of Incorporation.[18] The New Certificate of Incorporation would add that, for purposes of any redemptions of shares purportedly transferred in violation of Article Fifth of the New Certificate of Incorporation, which sets forth the limitations on transfer, ownership and voting, fair market value would be determined as the volume-weighted average price per share of the common stock during the five business days immediately preceding the redemption.[19] The Exchanges state that specifying the manner by which fair market value would be determined would enhance this remedy and provide clarity in the event that it is necessary to enforce this redemption provision.[20]

4. No Action by Written Consent

The New Certificate of Incorporation would provide that any action required or permitted to be taken at an annual or special meeting of stockholders may be taken only upon the vote of stockholders at an annual or special meeting and may not be taken by written consent of stockholders without a meeting.[21]

5. Future Amendments to the Certificate of Incorporation

The New Certificate of Incorporation would require that certain provisions of the New Certificate of Incorporation may not be repealed or amended in any respect, and no other provision may be adopted, amended or repealed which would have the effect of modifying or permitting the circumvention of such provisions, unless such action is approved by the affirmative vote of at least 66⅔% of the total voting power of the Corporation's outstanding securities entitled to vote generally in the election of directors, voting together as a single class.[22] The relevant provisions include Article Fourth(c) and (d), relating to voting rights and conversion of Non-Voting Common Stock, and Articles Fifth through Fourteenth, relating to limitations on transfer, ownership and voting, board of directors, duration of the Corporation, adopting, amending or repealing bylaws, indemnification and limitation of director liability, meetings of stockholders, forum selection, compromise or other arrangement, Section 203 opt-in, and amendments to the certificate of incorporation, respectively.

According to the Exchanges, the purpose of this supermajority requirement, which they believe is common among public companies, is to deter actions being taken that the Corporation believes may be detrimental to the Corporation, including any actions that could detrimentally affect its ability to comply with its unique responsibilities under the Act as the ultimate parent of four registered national securities exchanges.[23] The Exchanges further state that the reason the supermajority voting requirement is applicable only to certain specified provisions of the New Certificate of Incorporation is to focus such requirement on the most critical provisions of the New Certificate of Incorporation.[24]

6. Other Amendments

According to the Exchanges, the proposal would also amend and restate various other provisions of the Current Certificate of Incorporation in a manner that the Exchanges believe are intended to reflect provisions that are more customary for publicly-owned companies organized under Delaware Law, such as those relating to the Corporation's preferred stock,[25] forum selection,[26] and Section 203 opt-in,[27] among others.[28] The New Certificate of Incorporation also removes various references to the Investor Rights Agreement, as the provisions of that agreement, other than certain registration rights, are expected to terminate upon the occurrence of the IPO.[29] Finally, the exchanges propose various non-substantive, stylistic or technical changes throughout the New Certificate of Incorporation. For example, the New Certificate of Incorporation would amend the name of the Corporation from "BATS Global Markets, Inc." to "Bats Global Markets, Inc."[30]

B. The New Bylaws

1. Annual Meeting of Stockholders

The Exchanges propose to revise the Current Bylaws to require stockholders to make certain disclosures and representations in notices to the Corporation concerning business proposals and director nominations at annual meetings, and to comply with longer advanced notice requirements.[31]

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would serve for a term ending on the date 2018 annual meeting of stockholders, and directors initially designated as Class III directors would serve for a term ending on the date 2019 annual meeting of stockholders. *See id.*

[15] *See* proposed Article Sixth(d) of the New Certificate of Incorporation.

[16] *See* EDGX Notice, *supra* note 3, at 8769; EDGA Notice, *supra* note 3, at 8790; BATS Notice, *supra* note 3, at 9010; and BYX Notice, *supra* note 3, at 9054–55.

[17] *Id.*

[18] The New Certificate of Incorporation would maintain the Current Certificate of Incorporation's provisions that impose a 40% ownership limit on the amount of capital stock of the Corporation that any person, either alone or together with its related persons, may own, directly or indirectly, of record or beneficially; impose a 20% ownership limit on the amount of capital stock of the Corporation that any member of the Exchange, either alone, or together with its related persons, may own directly or indirectly, of record or beneficially; and prohibit any person, either alone or together with its related persons, from having or exercising more than 20% of the voting power of the capital stock of the Corporation. *See* proposed Article Fifth(b)(i) of the New Certificate of Incorporation.

[19] *See* proposed Article Fifth(e) of the New Certificate of Incorporation.

[20] *See* EDGX Notice, *supra* note 3, at 8769; EDGA Notice, *supra* note 3, at 8790; BATS Notice, *supra* note 3, at 9010; and BYX Notice, *supra* note 3, at 9055.

[21] *See* proposed Article Tenth(c) of the New Certificate of Incorporation.

[22] *See* proposed Article Fourteenth(a) of the New Certificate of Incorporation.

[23] *See* EDGX Notice, *supra* note 3, at 8769; EDGA Notice, *supra* note 3, at 8790; BATS Notice, *supra* note 3, at 9010; and BYX Notice, *supra* note 3, at 9055.

[24] *See* EDGX Notice, *supra* note 3, at 8769; EDGA Notice, *supra* note 3, at 8790; BATS Notice, *supra* note 3, at 9010–11; and BYX Notice, *supra* note 3, at 9055.

[25] *See* proposed Article Fourth (a)(ii) of the New Certificate of Incorporation.

[26] *See* proposed Article Eleventh of the New Certificate of Incorporation.

[27] *See* proposed Article Thirteenth of the New Certificate of Incorporation.

[28] *See* EDGX Notice, *supra* note 3, at 8770; EDGA Notice, *supra* note 3, at 8791; BATS Notice, *supra* note 3, at 9011; and BYX Notice, *supra* note 3, at 9055–56.

[29] *See* EDGX Notice, *supra* note 3, at 8770; EDGA Notice, *supra* note 3, at 8791; BATS Notice, *supra* note 3, at 9011; and BYX Notice, *supra* note 3, at 9056.

[30] *See id.*

[31] *See generally* proposed Section 2.02 of the New Bylaws. The New Bylaws would also state that such notice requirements would be satisfied if done in compliance with Exchange Act Rule 14a-8. *See*

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In addition, the New Bylaws would require that all proposals and nominations comply with applicable requirements of the Act.[32] The Exchanges represent that the purpose of the disclosure and representation requirements is to assure that stockholders asked to vote on stockholder proposals or nominations are more fully informed and are able to consider any proposals or nominations along with the interests of those stockholders or the beneficial owners on whose behalf such proposal or nomination is being made.[33]

2. Special Meetings of Stockholders

The New Bylaws would only permit a special meeting of the stockholders to be called by the board of directors pursuant to a resolution adopted by the majority of the board.[34] According to the Exchanges, this amendment is designed to prevent any stockholder from exercising undue control over the operation of an Exchange by circumventing the board of directors of the Corporation through a special meeting of the stockholders.[35]

3. Adjournment of Meetings

The New Bylaws would also provide that only the chairman of the meeting or the board of directors would be permitted to adjourn a stockholder meeting.[36] According to the Exchanges, such a requirement is common among publicly-held companies.[37] Furthermore, the Exchanges believe that this amendment would provide the Corporation with flexibility to postpone a stockholder vote if it determines it is necessary and would prevent stockholders from adjourning a meeting if the board of directors and chairman desire to continue with the meeting.[38]

4. No Action by Written Consent

The Exchanges propose that no action may be taken by written consent of the stockholders without a meeting, subject to the rights of any holders of Preferred Stock.[39]

5. Number of Directors and Classified Board Structure

Under the New Bylaws, the board of directors would consist of one or more directors, with the exact number of directors to be determined by resolution adopted by the majority of the board of directors.[40] In addition, the New Bylaws would, consistent with the New Certificate of Incorporation, establish a classified board structure, in which the directors would be divided into three classes of equal size, to the extent possible.[41]

6. Removal of Directors

The Current Bylaws provide that the board of directors or any director may be removed, with or without cause, by the affirmative vote of at least 66⅔ percent of the voting power of all then-outstanding shares of voting stock of the Corporation.[42] The New Bylaws would provide that directors may only be removed for cause with the affirmative vote of a simple majority of the holders of voting power of all then-outstanding securities of the Corporation generally entitled to vote in the election of directors, voting together as a single class.[43]

The Exchanges state that the purpose of this amendment is to align the Corporation's requirements for removal of directors with Delaware Law, which generally provides that, in the case of a corporation with a classified board, a simple majority of stockholders may remove any director, but only for cause, unless the certificate of incorporation provides otherwise.[44]

7. Future Bylaws Amendments

The New Bylaws would provide that the bylaws may be altered, adopted, amended or repealed either by a majority of the board of directors, or by the stockholders with the affirmative vote of not less than 66⅔ percent of the total voting power then entitled to vote at a meeting of stockholders voting as a single class.[45] The Exchanges state that the purpose of this amendment is to be consistent with other publicly-held companies.[46]

In addition to the board of directors and stockholder approval requirements, the New Bylaws would maintain the provisions requiring that, for so long as the Corporation will control a national securities exchange registered with the Commission under Section 6 of the Act, before any amendment to the New Bylaws may become effective, the amendment must be submitted to the board of directors of such exchange, and if required by Section 19 of the Act, filed with or filed with and approved by the Commission.[47]

8. Other Amendments

The New Bylaws make various non-substantive, stylistic or technical changes throughout. For example, the New Bylaws remove references to the Investor Rights Agreement, as the provisions of that agreement, other than certain registration rights, is expected to terminate upon the occurrence of the IPO.[48] The proposal would also amend and restate various other provisions such as those relating to the registered office of the Corporation,[49] quorum and vote requirements,[50] voting rights,[51] organization,[52] vacancies and resignation of directors,[53] board committees,[54] preferred stock directors,[55] officers of the Corporation,[56] form of stock certificates,[57] transfers of stock,[58] fixing of record dates,[59] indemnification,[60] notices,[61] among others.

III. Discussion

After careful review of the proposal, the Commission finds that the proposed rule changes are consistent with the requirements of the Act and the rules and regulations thereunder applicable to

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proposed Section 2.02(f) of the New Bylaws. Additionally, the New Bylaws would require stockholders to appear at any meeting to present such proposals or nominations. *See* proposed Section 2.02(d) of the New Bylaws.

[32] *See* proposed Section 2.02(e) of the New Bylaws.

[33] *See* EDGX Notice, *supra* note 3, at 8771; EDGA Notice, *supra* note 3, at 8792; BATS Notice, *supra* note 3, at 9012; and BYX Notice, *supra* note 3, at 9057.

[34] *See* proposed Section 2.03 of the New Bylaws.

[35] *See* EDGX Notice, 81 FR at 8771; EDGA Notice, 81 FR at 8792; BATS Notice, 81 FR at 9012; and BYX Notice, 81 FR at 9057.

[36] *See* proposed Section 2.06 of the New Bylaws.

[37] *See* EDGX Notice, *supra* note 3, at 8772; EDGA Notice, *supra* note 3, at 8793; BATS Notice, *supra* note 3, at 9013; and BYX Notice, *supra* note 3, at 9057.

[38] *See id.*

[39] *See* proposed Section 2.10 of the New Bylaws. This revision would be consistent with the New Certificate of Incorporation. *See* proposed Article Tenth(c) of the New Certificate of Incorporation.

[40] *See* proposed Section 3.01 of the New Bylaws.

[41] *Id.*

[42] *See* Section 3.05 of the Current Bylaws.

[43] *See* proposed Section 3.05 of the New Bylaws.

[44] *See* EDGX Notice, *supra* note 3, at 8772; EDGA Notice, *supra* note 3, at 8793; BATS Notice, *supra* note 3, at 9013–14; and BYX Notice, *supra* note 3, at 9058.

[45] *See* proposed Article XI of the New Bylaws.

[46] *See* EDGX Notice, *supra* note 3, at 8773–74; EDGA Notice, *supra* note 3, at 8794–95; BATS Notice, *supra* note 3, at 9014–15; and BYX Notice, *supra* note 3, at 9059–60.

[47] *See* proposed Article XI of the New Bylaws.

[48] *See* EDGX Notice, *supra* note 3, at 8774; EDGA Notice, *supra* note 3, at 8795; BATS Notice, *supra* note 3, at 9015; and BYX Notice, *supra* note 3, at 9060.

[49] *See* proposed Section 1.01 of the New Bylaws.

[50] *See* proposed Section 2.05 of the New Bylaws.

[51] *See* proposed Section 2.07 of the New Bylaws.

[52] *See* proposed Section 2.11 of the New Bylaws.

[53] *See* proposed Sections 3.03 and 3.04 of the New Bylaws.

[54] *See* proposed Section 3.10 of the New Bylaws.

[55] *See* proposed Section 3.12 of the New Bylaws.

[56] *See* proposed Section 4.01 of the New Bylaws.

[57] *See* proposed Section 6.01 of the New Bylaws.

[58] *See* proposed Section 6.03(d) of the New Bylaws.

[59] *See* proposed Section 6.04 of the New Bylaws.

[60] *See* Article X of the Current Bylaws.

[61] *See* proposed Article X of the New Bylaws.

a national securities exchange.[62] In particular, the Commission finds that the proposals are consistent with Section 6(b)(1) of the Act,[63] which require a national securities exchange to be so organized and have the capacity to carry out the purposes of the Act and to enforce compliance by its members and persons associated with the provisions of the Act.

The Commission notes that the Exchanges have represented that the proposed rule changes relate solely to the certificate of the incorporation and bylaws of the Corporation and that each Exchange will continue to be governed by its respective existing certificate of incorporation and bylaws.[64] BATS and BYX have represented that BATS Global Markets Holdings, Inc., an intermediate holding company wholly-owned by the Corporation will continue to directly and solely hold the stock in, and voting power of, BATS and BYX, and BATS and BYX will continue to operate pursuant to its existing governance structure.[65] EDGA and EDGX have similarly represented that Direct Edge LLC, an intermediate holding company wholly-owned by the Corporation will continue to directly and solely hold the stock in, and voting power of, EDGX and EDGA and, EDGX and EDGA will continue to operate pursuant to its existing governance structure.[66]

The Commission further notes that each Exchange has represented that the proposed rule change will maintain the existing ownership and voting limitations in the Current Certificate of Incorporation.[67] As a result, the Commission believes that the proposed rule changes should effectively maintain the ownership and voting limits currently in place for the Corporation consistent with Section 6(b)(1) of the Exchange Act. In addition, the Commission notes that each Exchange has represented that it would continue to operate pursuant to its existing governance structure.[68] The Commission also notes that the Exchanges do not propose any substantive changes to the provision of the Corporation's bylaws relating to SRO functions of the Exchanges.[69]

The Commission, therefore, believes that the proposed rule changes are consistent with Section 6(b)(1) of the Exchange Act, which requires each Exchange to have the ability to be so organized as to have the capacity to carry out the purposes of the Act and to comply, and to enforce compliance by its members and persons associated with its members, with provisions of the Act, the rules and regulations thereunder, and the rules of such Exchange.[70]

III. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[71] that the proposed rule changes (SR–BATS–2016–10, SR–BYX–2016–02, SR–EDGX–2016–04, SR–EDGA–2016–01) be, and hereby are, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[72]

Robert W. Errett,

Deputy Secretary.

[FR Doc. 2016–07512 Filed 4–1–16; 8:45 am]

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[62] In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[63] 15 U.S.C. 78f(b)(1).

[64] *See* EDGX Notice, *supra* note 3, at 8767; EDGA Notice, *supra* note 3, at 8788; BATS Notice, *supra* note 3, at 9008; and BYX Notice, *supra* note 3, at 9053.

[65] *See* BATS Notice, *supra* note 3, at 9008; and BYX Notice, *supra* note 3, at 9053.

[66] *See* EDGX Notice, *supra* note 3, at 8767; EDGA Notice, *supra* note 3, at 8788.

[67] *See supra* note 18 (discussing the limitations of ownership of capital stock of the Corporation to 40% for any Person and 20% for any member and voting power of capital stock of the Corporation to 20% for any Person).

[68] *See* EDGX Notice, *supra* note 3, at 8767; EDGA Notice, *supra* note 3, at 8788; BATS Notice, *supra* note 3, at 9008; and BYX Notice, *supra* note 3, at 9053.

[69] *See* proposed Article XII of the New Bylaws.

[70] 15 U.S.C. 78f(b)(1).

[71] 15 U.S.C. 78s(b)(2).

[72] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–77463; File No. SR–NYSEArca–2015–107]

Self-Regulatory Organizations; NYSE Arca, Inc.; Order Granting Approval of Proposed Rule Change, as Modified by Amendment Nos. 1, 2, 3, and 4 Thereto, To List and Trade Shares of the REX Gold Hedged S&P 500 ETF and the REX Gold Hedged FTSE Emerging Markets ETF Under NYSE Arca Equities Rule 8.600

March 29, 2016.

I. Introduction

On December 10, 2015, NYSE Arca, Inc. ("Exchange") filed with the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] a proposed rule change to list and trade shares ("Shares") of the REX Gold Hedged S&P 500 ETF and the REX Gold Hedged FTSE Emerging Markets ETF (individually, a "Fund," and collectively, "Funds"), which will be offered by Exchange Traded Concepts Trust ("Trust"). The proposed rule change was published for comment in the **Federal Register** on December 30, 2015.[3] On January 15, 2016, the Exchange submitted Amendment No. 1 to the proposed rule change.[4] On January 27, 2016, the Exchange submitted Amendment No. 2 to the proposed rule change.[5] On February 11, 2016, the Exchange submitted Amendment No. 3 to the proposed rule change.[6] On February 12, 2016, pursuant to Section 19(b)(2) of the Act,[7] the Commission designated a longer period within which to approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether to disapprove the proposed rule change.[8] On March 24, 2016, the Exchange submitted Amendment No. 4 to the proposed rule change.[9] The Commission

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[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 76761 (December 23, 2015), 80 FR 81564 ("Notice").

[4] In Amendment No. 1, which replaced and superseded the original filing in its entirety, the Exchange clarified the Funds' direct and indirect principal and other investments; the determination of the value of certain underlying assets for purposes of the Funds' net asset value ("NAV") calculation; and the availability of price information for certain underlying assets. Because Amendment No. 1 adds clarification to the proposal and does not materially alter the substance of the proposed rule change or raise unique or novel regulatory issues, Amendment No. 1 is not subject to notice and comment (Amendment No. 1 to the proposed rule change is available at: *http://www.sec.gov/comments/sr-nysearca-2015-107/nysearca2015107-1.pdf*).

[5] In Amendment No. 2, the Exchange made additional clarifying changes regarding the Funds' other investments; the availability of price information for certain underlying assets; and the dissemination of the Portfolio Indicative Value (as defined herein). Because Amendment No. 2 adds clarification to the proposal and does not materially alter the substance of the proposed rule change or raise unique or novel regulatory issues, Amendment No. 2 is not subject to notice and comment (Amendment No. 2 to the proposed rule change is available at: *http://www.sec.gov/comments/sr-nysearca-2015-107/nysearca2015107-2.pdf*).

[6] In Amendment No. 3, the Exchange expanded the application of the criteria for non-U.S. equity securities in the REX Gold Hedged FTSE Emerging Markets ETF portfolio so that they will apply on a continual basis. Because Amendment No. 3 does not materially alter the substance of the proposed rule change or raise unique or novel regulatory issues, Amendment No. 3 is not subject to notice and comment (Amendment No. 3 to the proposed rule change is available at: *http://www.sec.gov/comments/sr-nysearca-2015-107/nysearca2015107-3.pdf*).

[7] 15 U.S.C. 78s(b)(2).

[8] *See* Securities Exchange Act Release No. 77128, 81 FR 8557 (February 19, 2016).

[9] In Amendment No. 4, the Exchange clarified that: (a) all statements and representations made in the proposal regarding the description of the

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received no comments on the proposed rule change. This order grants approval of the proposed rule change, as modified by Amendment Nos. 1, 2, 3, and 4 thereto.

II. Exchange's Description of the Proposed Rule Change

The Exchange proposes to list and trade Shares of the Funds under NYSE Arca Equities Rule 8.600, which governs the listing and trading of Managed Fund Shares on the Exchange. The Shares will be offered by the Trust,[10] which is registered with the Commission as an investment company and has filed a registration statement on Form N–1A with the Commission.[11] Exchange Traded Concepts, LLC will serve as the investment adviser to the Funds ("Adviser").[12] Vident Investment Advisory, LLC ("Sub-Adviser") will serve as sub-adviser to the Funds.[13] SEI Investments Distribution Co. will be the principal underwriter and distributor of the Funds' Shares. SEI Investments Global Funds Services will serve as the administrator, custodian, transfer agent, and fund accounting agent for the Funds.[14]

A. Exchange's Description of the Funds' Principal Investments

(1) REX Gold Hedged S&P 500 ETF—Principal Investments

This Fund will seek to outperform the total return performance of the S&P 500 Dynamic Gold Hedged Index ("S&P Benchmark") [15] by actively hedging the returns of the S&P 500 Index using gold futures. The Fund will seek to achieve its investment objective of outperforming the S&P Benchmark by providing exposure to a gold-hedged U.S. large-cap portfolio using a quantitative, rules-based strategy. The Fund will invest at least 80% of its assets (plus the amount of any borrowings for investment purposes) in (i) U.S. exchange-listed large-cap U.S. stocks; (ii) gold futures; (iii) exchange-traded funds ("ETFs") [16] and exchange-traded closed-end funds (together with ETFs, "Underlying Funds") that provide exposure to large-cap U.S. stocks; (iv) ETFs, commodity-related pooled vehicles,[17] and exchange-traded notes ("ETNs") [18] that provide exposure to gold; and (v) futures that provide exposure to the S&P 500 Index. The Fund will not invest in non-U.S. stocks. The Fund will seek to achieve a similar level of volatility as that of the S&P Benchmark, although there is no assurance it will do so. The Sub-Adviser will continuously monitor the Fund's holdings in order to enhance performance while still providing approximately equal notional exposure to equity securities and gold futures contracts.

The Fund will not directly hold gold futures contracts, commodity-related pooled vehicles, and options on commodity futures (as referenced below). Rather, the Fund expects to gain exposure to these instruments by investing up to 25% of its total assets, as measured at the end of every quarter of the Fund's taxable year, in a wholly-owned and controlled Cayman Islands subsidiary ("Subsidiary"). The Subsidiary will be advised by the Adviser, and the Fund's investment in the Subsidiary will primarily be intended to provide the Fund with exposure to the price of gold.

(2) REX Gold Hedged FTSE Emerging Markets ETF—Principal Investments

This Fund will seek to outperform the total return performance of the FTSE Emerging Gold Overlay Index ("FTSE Benchmark") [19] by actively hedging a portfolio of emerging markets securities using gold futures. The Fund will seek to achieve its investment objective of outperforming the FTSE Benchmark by providing exposure to a gold-hedged emerging markets portfolio using a quantitative, rules-based strategy. The Fund will invest at least 80% of its assets (plus the amount of any borrowings for investment purposes) in (i) equity securities of emerging markets companies, as such companies are classified by the FTSE Benchmark ("Emerging Markets Securities"); [20] (ii)

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portfolio, limitations on portfolio holdings or reference assets, or the applicability of Exchange rules and surveillance procedures shall constitute continued listing requirements for listing the Shares on the Exchange; (b) the issuer will advise the Exchange of any failure by the Funds to comply with the continued listing requirements; (c) pursuant to its obligations under Section 19(g)(1) of the Act, the Exchange will monitor for compliance with the continued listing requirements; and (d) if any Fund is not in compliance with the applicable listing requirements, the Exchange will commence delisting procedures under NYSE Arca Equities Rule 5.5(m). Because Amendment No. 4 does not materially alter the substance of the proposed rule change or raise unique or novel regulatory issues, Amendment No. 4 is not subject to notice and comment (Amendment No. 4 to the proposed rule change is available at: *http://www.sec.gov/comments/sr-nysearca-2015-107/nysearca2015107-4.pdf*).

[10] The Exchange represents that the Trust has obtained certain exemptive relief under the Investment Company Act of 1940 ("1940 Act").

[11] According to the Exchange, on October 9, 2015, the Trust filed with the Commission an amendment to its registration statement on Form N–1A under the Securities Act of 1933 and under the 1940 Act relating to the Funds (File Nos. 333–156529 and 811–22263) ("Registration Statement").

[12] The Exchange represents that the Funds are subject to regulation under the Commodity Exchange Act and Commodity Futures Trading Commission ("CFTC") rules as commodity pools. The Adviser is registered as a commodity pool operator, and the Funds will be operated in accordance with CFTC rules.

[13] The Exchange represents that the Adviser and Sub-Adviser are not registered as broker-dealers or affiliated with any broker-dealers. In the event (a) the Adviser or Sub-Adviser becomes a registered broker-dealer or newly affiliated with a broker-dealer, or (b) any new adviser or sub-adviser is a registered broker-dealer or becomes affiliated with a broker-dealer, it will implement a fire wall with respect to its relevant personnel or its broker-dealer affiliate regarding access to information concerning the composition or changes to a portfolio, and will be subject to procedures designed to prevent the use and dissemination of material non-public information regarding such portfolio.

[14] The Commission notes that additional information regarding the Funds, the Trust, and the Shares, including investment strategies, risks, creation and redemption procedures, fees, portfolio holdings disclosure policies, calculation of NAV, distributions, and taxes, among other things, can be found in the Notice, the amendments, and the Registration Statement, as applicable. *See* Notice, Amendment Nos. 1–4, and Registration Statement, *supra* notes 3, 4, 5, 6, 9, and 11, respectively.

[15] According to the Exchange, the S&P Benchmark seeks to reflect the returns of a portfolio of S&P 500 stocks, hedged with a long gold futures overlay. Specifically, the S&P Benchmark measures the total return performance of a hypothetical portfolio consisting of securities that compose the S&P 500 Index, which measures the performance of the large-capitalization sector of the U.S. equity market, and a long position in gold futures contracts, the notional value of which is comparable to the value of the S&P Benchmark's equity component.

[16] For purposes of this filing, ETFs include Investment Company Units (as described in NYSE Arca Equities Rule 5.2(j)(3)); Portfolio Depository Receipts (as described in NYSE Arca Equities Rule 8.100); and Managed Fund Shares (as described in NYSE Arca Equities Rule 8.600). The Underlying Funds in which a Fund will invest all will be listed and traded on national securities exchanges. While the Funds may invest in inverse ETFs, the Funds will not invest in leveraged (*e.g.*, 2X, –2X, 3X, or –3X) ETFs.

[17] For purposes of the filing, commodity-related pooled vehicles will mean: Equity Gold Shares (as described in NYSE Arca Equities Rule 5.2(j)(5)); Trust Issued Receipts (as described in NYSE Arca Equities Rule 8.200); Commodity-Based Trust Shares (as described in NYSE Arca Equities Rule 8.201); Commodity Index Trust Shares (as described in NYSE Arca Equities Rule 8.203); and Trust Units (as described in NYSE Arca Equities Rule 8.500).

[18] ETNs, which will be listed on a national securities exchange, are securities such as those described in NYSE Arca Equities Rule 5.2(j)(6). While the Funds may invest in inverse ETNs, the Funds will not invest in leveraged (*e.g.*, 2X, –2X, 3X, or –3X) ETNs.

[19] The FTSE Benchmark seeks to reflect the returns of a portfolio of Emerging Markets Securities (as defined below), hedged with a long gold futures overlay. Specifically, the FTSE Benchmark measures the total return performance of a hypothetical portfolio consisting of Emerging Markets Securities and a long position in gold futures, the notional value of which is comparable to the value of the FTSE Benchmark's equity component.

[20] The non-U.S. equity securities in this Fund's portfolio will meet the following criteria on a continual basis: (1) non-U.S. equity securities each shall have a minimum market value of at least $100 million; (2) non-U.S. equity securities each shall have a minimum global monthly trading volume of 250,000 shares, or minimum global notional volume traded per month of $25,000,000, averaged over the

gold futures; (iii) Underlying Funds, ADRs, Global Depository Receipts ("GDRs"), American Depositary Shares ("ADS"), European Depositary Receipts ("EDRs"), and International Depository Receipts ("IDRs," and together with ADRs, GDRs, EDRs, and ADS, "Depositary Receipts")[21] that provide exposure to Emerging Markets Securities; (iv) ETFs,[22] commodity-related pooled vehicles,[23] and ETNs[24] that provide exposure to gold; and (v) futures that provide exposure to Emerging Markets Securities. The Fund will seek to achieve a similar level of volatility as that of the FTSE Benchmark, although there is no assurance it will do so. The Sub-Adviser will continuously monitor the Fund's holdings in order to enhance performance while still providing approximately equal notional exposure to equity securities and gold futures contracts.

The Fund will not directly hold gold futures contracts, commodity-related pooled vehicles, and options on commodity futures (as referenced below). Rather, the Fund expects to gain exposure to these instruments by investing up to 25% of its total assets, as measured at the end of every quarter of the Fund's taxable year, in a wholly-owned and controlled Cayman Islands subsidiary ("Subsidiary"). The Subsidiary will be advised by the Adviser, and the Fund's investment in the Subsidiary will primarily be intended to provide the Fund with exposure to the price of gold.

B. Exchange's Description of the Funds' Other Investments

While each Fund will invest at least 80% of its net assets in the securities and financial instruments described above, each Fund may invest its remaining assets in the securities and financial instruments described below.

In addition to the exchange-traded equity securities described above for the Funds, the Funds may invest in the following exchange-traded equity securities: exchange-traded common stock (other than large-cap U.S. stocks or Emerging Markets Securities, respectively, for the respective Funds); exchange-traded preferred stock; exchange-traded warrants; exchange-traded MLPs; exchange-traded rights; and exchange-traded convertible securities.

In addition to the futures transactions described above, the Funds may engage in other index, commodity, and currency futures transactions, and may engage in exchange-traded options transactions on such futures. The Funds may use futures contracts and related options for bona fide hedging; to offset changes in the value of securities held or expected to be acquired or be disposed of; to gain exposure to a particular market, index, or instrument; or for other risk management purposes. The Funds also may purchase and write exchange-traded and over-the-counter put and call options on securities, securities indices, and currencies. A Fund may purchase put and call options on securities to protect against a decline in the market value of the securities in its portfolio or to anticipate an increase in the market value of securities that a Fund may seek to purchase in the future.

The Funds may invest in restricted (Rule 144A) securities.

Each Fund will also invest in cash and cash equivalents[25] to collateralize its exposure to futures contracts and for investment purposes. Each Fund may enter into repurchase agreements with financial institutions, and each Fund may enter into reverse repurchase agreements as part of a Fund's investment strategy. In addition, the Funds may invest in U.S. government securities, namely, U.S. Treasury obligations,[26] U.S. government agency securities, and U.S. Treasury zero-coupon bonds ("Fixed Income Instruments").

The Funds will invest in the securities of other investment companies, including the Underlying Funds, to the extent that such an investment would be consistent with the requirements of Section 12(d)(1) of the 1940 Act, or any rule, regulation, or order of the Commission or interpretation thereof.

C. Exchange's Description of the Funds' Subsidiaries

According to the Exchange, each Fund will achieve commodities exposure through investment in its respective Subsidiary. Such investment may not exceed 25% of a Fund's total assets, as measured at the end of every quarter of a Fund's taxable year. Each Subsidiary will invest in gold futures contracts, commodity-related pooled vehicles, options on commodity futures, and other investments (cash, cash equivalents, and Fixed Income Instruments with less than one year to maturity) intended to serve as margin or collateral or otherwise support the Subsidiary's derivatives positions. Unlike a Fund, the Subsidiary may invest without limitation in commodity futures and may use leveraged investment techniques. The Subsidiaries otherwise are subject to the same general investment policies and restrictions as the Funds.[27]

D. Exchange's Description of the Funds' Investment Restrictions

Each Fund may invest up to an aggregate amount of 15% of its net assets in illiquid assets (calculated at the time of investment), including Rule 144A securities deemed illiquid by the Adviser,[28] consistent with Commission

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last six months; (3) the most heavily weighted non-U.S. equity security shall not exceed 25% of the weight of the Fund's entire portfolio, and, to the extent applicable, the five most heavily weighted non-U.S. equity securities shall not exceed 60% of the weight of the Fund's entire portfolio; and (4) each non-U.S. equity security shall be listed and traded on an exchange that has last-sale reporting. For purposes of this filing, the term "non-U.S. equity securities" includes the following: Common stocks and preferred securities of foreign corporations; warrants; convertible securities; master limited partnerships ("MLPs"); rights; and Depositary Receipts (as defined below, excluding Depositary Receipts that are registered under the Act and non-exchange-listed American Depositary Receipts ("ADRs")).

[21] Non-exchange-listed ADRs will not exceed 10% of the Fund's net assets.

[22] *See supra* note 16.

[23] *See supra* note 17.

[24] *See supra* note 18.

[25] For purposes of this filing, cash equivalents include short-term instruments (instruments with maturities of less than 3 months) of the following types: (i) U.S. Government securities, including bills, notes, and bonds differing as to maturity and rates of interest, which are either issued or guaranteed by the U.S. Treasury or by U.S. Government agencies or instrumentalities; (ii) certificates of deposit issued against funds deposited in a bank or savings and loan association; (iii) bankers' acceptances; (iv) repurchase agreements and reverse repurchase agreements; (v) bank time deposits; (vi) commercial paper; and (vii) money market funds.

[26] U.S. Treasury obligations consist of bills, notes, and bonds issued by the U.S. Treasury and separately traded interest and principal component parts of such obligations that are transferable through the federal book-entry system known as Separately Traded Registered Interest and Principal Securities and Treasury Receipts.

[27] According to the Exchange, the Subsidiaries are not registered under the 1940 Act. As an investor in its Subsidiary, each Fund, as the Subsidiary's sole shareholder, would not have the protections offered to investors in registered investment companies. However, because a Fund would wholly own and control the Subsidiary, and a Fund and its Subsidiary would be managed by the Adviser, it is unlikely that the Subsidiary would take action contrary to the interests of a Fund or a Fund's shareholders. A Fund's Board of Trustees has oversight responsibility for the investment activities of the Fund, including its investments in its Subsidiary, and the Fund's role as the sole shareholder of its Subsidiary. Also, in managing a Subsidiary's portfolio, the Adviser and Sub-Adviser would be subject to the same investment restrictions and operational guidelines that apply to the management of a Fund.

[28] In reaching liquidity decisions, the Adviser may consider the following factors: the frequency of trades and quotes for the security; the number of dealers wishing to purchase or sell the security and the number of other potential purchasers; dealer undertakings to make a market in the security; and

Continued

guidance. Each Fund will monitor its portfolio liquidity on an ongoing basis to determine whether, in light of current circumstances, an adequate level of liquidity is being maintained, and will consider taking appropriate steps in order to maintain adequate liquidity if, through a change in values, net assets, or other circumstances, more than 15% of a Fund's net assets are invested in illiquid assets. Illiquid assets include securities subject to contractual or other restrictions on resale and other instruments that lack readily available markets as determined in accordance with Commission staff guidance.

Each Fund will concentrate its investments (*i.e.*, hold 25% or more of its total assets) in a particular industry or group of industries to approximately the same extent that the respective benchmark concentrates in an industry or group of industries, and each Fund will be classified as a non-diversified investment company under the 1940 Act.

Each Fund will seek to qualify for treatment as a Regulated Investment Company under the Internal Revenue Code.

Each Fund's investments will be consistent with its investment objective and will not be used to enhance leverage.

III. Discussion and Commission Findings

After careful review, the Commission finds that the Exchange's proposal to list and trade the Shares is consistent with the Act and the rules and regulations thereunder applicable to a national securities exchange.[29] In particular, the Commission finds that the proposed rule change, as modified by Amendment Nos. 1, 2, 3, and 4, is consistent with Section 6(b)(5) of the Act,[30] which requires, among other things, that the Exchange's rules be designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

The Commission also finds that the proposal to list and trade the Shares on the Exchange is consistent with Section 11A(a)(1)(C)(iii) of the Act,[31] which sets forth Congress's finding that it is in the public interest and appropriate for the protection of investors and the maintenance of fair and orderly markets to assure the availability to brokers, dealers, and investors of information with respect to quotations for and transactions in securities.

Quotation and last-sale information for the Shares will be available via the Consolidated Tape Association ("CTA") high-speed line. The Portfolio Indicative Value, as defined in NYSE Arca Equities Rule 8.600(c)(3), will be widely disseminated at least every 15 seconds during the Core Trading Session by one or more major market data vendors.[32] On each business day, before commencement of trading in the Shares in the Core Trading Session on the Exchange, the Funds' Web site will disclose the Disclosed Portfolio[33] that will form the basis for each Fund's NAV calculation at the end of the business day.[34] The Funds' Web site will also include a form of the prospectus for the Funds and additional data relating to NAV and other applicable quantitative information. Information regarding market price and trading volume of the Shares will be continually available on a real-time basis throughout the day on brokers' computer screens and other electronic services. Information regarding the previous day's closing price and trading volume information for the Shares will be published daily in the financial section of newspapers. Pricing information regarding each asset class in which a Fund will invest will generally be available through nationally recognized data service providers through subscription agreements. Quotation and last-sale information for the Underlying Funds, ETNs, and other U.S. exchange-traded equities, will be available via the CTA high-speed line, and, for equity securities that are U.S. exchange-listed, will be available from the national securities exchange on which they are listed. With respect to non-U.S. exchange-listed equity securities, intraday, closing, and settlement prices of common stocks and other equity securities (including shares of preferred securities and non-U.S. Depositary Receipts) will be available from the foreign exchanges on which such securities trade, as well as from major market data vendors. Price information for money market funds will be available from the investment company's Web site and from market data vendors. Price information relating to cash, cash equivalents (other than money market funds), futures, options, options on futures, Depositary Receipts, Rule 144A securities, repurchase agreements, reverse repurchase agreements, the S&P Benchmark, and the FTSE Benchmark will be available from major market data vendors. Information relating to futures and exchange-traded options on futures also will be available from the exchange on which such instruments are traded, and information relating to U.S. exchange-traded options will be available via the Options Price Reporting Authority.

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the nature of the security and the nature of the marketplace in which it trades (*e.g.*, the time needed to dispose of the security, the method of soliciting offers, and the mechanics of transfer).

[29] In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[30] 15 U.S.C. 78f(b)(5).

[31] 15 U.S.C. 78k–1(a)(1)(C)(iii).

[32] According to the Exchange, several major market data vendors display or make widely available Portfolio Indicative Values taken from CTA or other data feeds.

[33] The term "Disclosed Portfolio" is defined in NYSE Arca Equities Rule 8.600(c)(2). On a daily basis, the Funds will also disclose on the Funds' Web site the following information regarding each portfolio holding of a Fund and its respective Subsidiary, as applicable to the type of holding: ticker symbol, CUSIP number or other identifier, if any; a description of the holding (including the type of holding); the identity of the security, commodity, index, or other asset or instrument underlying the holding, if any; for options, the option strike price; quantity held (as measured by, for example, par value, notional value, or number of shares, contracts, or units); maturity date, if any; coupon rate, if any; effective date, if any; market value of the holding; and the percentage weighting of the holding in a Fund's portfolio. The Web site information will be publicly available at no charge.

[34] The NAV for the Shares will be calculated after 4:00 p.m. Eastern Time each trading day. According to the Exchange, in computing a Fund's NAV, a Fund's securities holdings will be valued based on their last readily available market price. Price information on exchange-listed securities, including common stocks, preferred stocks, warrants, convertible securities, MLPs, rights, Underlying Funds, ETNs, Depositary Receipts, and commodity-related pooled vehicles in which a Fund invests, will be taken from the exchange where the security is primarily traded. Other portfolio securities and assets for which market quotations are not readily available or determined to not represent the current fair value will be valued based on fair value as determined in good faith by the Sub-Adviser in accordance with procedures adopted by the Board. Futures contracts and exchange-traded options on futures will be valued at the settlement or closing price determined by the applicable exchange. Exchange-traded options contracts will be valued at their most recent sale price. Over-the-counter options normally will be valued on the basis of quotes obtained from a third-party broker-dealer who makes markets in such securities or on the basis of quotes obtained from a third-party pricing service. Cash and cash equivalents (with the exception of money market funds) may be valued at market values, as furnished by recognized dealers in such securities or assets. Cash equivalents (with the exception of money market funds) also may be valued on the basis of information furnished by an independent pricing service that uses a valuation matrix which incorporates both dealer-supplied valuations and electronic data processing techniques. Shares of money market funds held by each Fund will be valued at their respective NAVs. Fixed Income Instruments, Rule 144A securities, repurchase agreements, and reverse repurchase agreements will generally be valued at bid prices received from independent pricing services as of the announced closing time for trading in fixed-income instruments in the respective market. Non-exchange-traded ADRs will be valued at the last quoted mid-price on the primary market on which they are traded.

Intra-day and closing price information from brokers and dealers or independent pricing services will be available for Fixed Income Instruments.

The Commission further believes that the proposal to list and trade the Shares is reasonably designed to promote fair disclosure of information that may be necessary to price the Shares appropriately and to prevent trading when a reasonable degree of transparency cannot be assured. The Exchange will obtain a representation from the issuer of the Shares of each Fund that the NAV per Share will be calculated daily and that the NAV and the Disclosed Portfolio will be made available to all market participants at the same time. Trading in Shares of each Fund will be halted if the circuit-breaker parameters in NYSE Arca Equities Rule 7.12 have been reached. Trading also may be halted because of market conditions or for reasons that, in the view of the Exchange, make trading in the Shares inadvisable.[35] Moreover, trading in the Shares will be subject to NYSE Arca Equities Rule 8.600(d)(2)(D), which sets forth circumstances under which Shares of the Funds may be halted. The Exchange represents that it has a general policy prohibiting the distribution of material, non-public information by its employees, and that neither the Adviser nor the Sub-Adviser is a broker-dealer or affiliated with a broker-dealer.[36] The Exchange also represents that, the Adviser, as the Reporting Authority, will implement and maintain, or be subject to, procedures designed to prevent the use and dissemination of material non-public information regarding the actual components of a Fund's portfolio.

The Exchange represents that it deems the Shares to be equity securities, thus rendering trading in the Shares subject to the Exchange's existing rules governing the trading of equity securities. In support of this proposal, the Exchange has made the following representations:

(1) The Shares will conform to the initial and continued listing criteria under NYSE Arca Equities Rule 8.600.

(2) The Exchange has appropriate rules to facilitate transactions in the Shares during all trading sessions.

(3) Trading in the Shares will be subject to the existing trading surveillances, which are adequate to properly monitor Exchange trading of the Shares in all trading sessions and to deter and detect violations of Exchange rules and applicable federal securities laws.[37]

(4) The regulatory staff of the Exchange or FINRA, on behalf of the Exchange, will communicate as needed regarding trading in the Shares, certain exchange-listed equity securities, certain futures, certain options on futures, and certain exchange-traded options with other markets and other entities that are members of the Intermarket Surveillance Group ("ISG"), and FINRA, on behalf of the Exchange, may obtain information regarding trading in such securities and financial instruments from such markets and other entities. In addition, the regulatory staff of the Exchange may obtain information regarding trading in such securities and financial instruments from markets and other entities that are members of ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement. FINRA, on behalf of the Exchange, also is able to access, as needed, trade information for certain fixed income securities held by a Fund reported to FINRA's Trade Reporting and Compliance Engine.

(5) Not more than 10% of the net assets of a Fund in the aggregate invested in futures contracts or options contracts shall consist of futures contracts or options contracts whose principal market is not a member of ISG or is a market with which the Exchange does not have a comprehensive surveillance sharing agreement.

(6) Prior to the commencement of trading of the Shares, the Exchange will inform its ETP Holders in a Bulletin of the special characteristics and risks associated with trading the Shares. The Bulletin will discuss the following: (a) The procedures for purchases and redemptions of Shares in Creation Unit aggregations (and that Shares are not individually redeemable); (b) NYSE Arca Equities Rule 9.2(a), which imposes a duty of due diligence on its ETP Holders to learn the essential facts relating to every customer prior to trading the Shares; (c) the risks involved in trading the Shares during the Opening and Late Trading Sessions when an updated Portfolio Indicative Value will not be calculated or publicly disseminated; (d) how information regarding the Portfolio Indicative Value and the Disclosed Portfolio is disseminated; (e) the requirement that ETP Holders deliver a prospectus to investors purchasing newly issued Shares prior to or concurrently with the confirmation of a transaction; and (f) trading information.

(7) For initial and continued listing, the Funds will be in compliance with Rule 10A–3 under the Act,[38] as provided by NYSE Arca Equities Rule 5.3.

(8) The REX Gold Hedged S&P 500 ETF will not invest in non-U.S. stocks.

(9) The non-U.S. equity securities in the REX Gold Hedged FTSE Emerging Markets ETF portfolio will meet the following criteria on a continual basis: (i) Non-U.S. equity securities each shall have a minimum market value of at least $100 million; (ii) non-U.S. equity securities each shall have a minimum global monthly trading volume of 250,000 shares, or minimum global notional volume traded per month of $25,000,000, averaged over the last six months; (iii) the most heavily weighted non-U.S. equity security shall not exceed 25% of the weight of the Fund's entire portfolio, and, to the extent applicable, the five most heavily weighted non-U.S. equity securities shall not exceed 60% of the weight of the Fund's entire portfolio; and (iv) each non-U.S. equity security shall be listed and traded on an exchange that has last-sale reporting. In addition, non-exchange-listed ADRs will not exceed 10% of this Fund's net assets.

(10) While a Fund may invest in inverse ETFs and ETNs, a Fund will not invest in leveraged (*e.g.,* 2X, –2X, 3X or –3X) ETFs and ETNs.

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[35] These may include: (1) The extent to which trading is not occurring in the securities or the financial instruments constituting the Disclosed Portfolio of the Funds; or (2) whether other unusual conditions or circumstances detrimental to the maintenance of a fair and orderly market are present.

[36] *See supra* note 13 and accompanying text. According to the Exchange, an investment adviser to an open-end fund is required to be registered under the Investment Advisers Act of 1940 ("Advisers Act"). As a result, the Adviser and Sub-Adviser and their related personnel will be subject to the provisions of Rule 204A–1 under the Advisers Act relating to codes of ethics. This Rule requires investment advisers to adopt a code of ethics that reflects the fiduciary nature of the relationship to clients as well as compliance with other applicable securities laws. Accordingly, procedures designed to prevent the communication and misuse of non-public information by an investment adviser must be consistent with Rule 204A–1 under the Advisers Act. In addition, Rule 206(4)-7 under the Advisers Act makes it unlawful for an investment adviser to provide investment advice to clients unless such investment adviser has (i) adopted and implemented written policies and procedures reasonably designed to prevent violations, by the investment adviser and its supervised persons, of the Advisers Act and the Commission rules adopted thereunder; (ii) implemented, at a minimum, an annual review regarding the adequacy of the policies and procedures established pursuant to subparagraph (i) above and the effectiveness of their implementation; and (iii) designated an individual (who is a supervised person) responsible for administering the policies and procedures adopted under subparagraph (i) above.

[37] The Exchange states that the Financial Industry Regulatory Authority ("FINRA") surveils trading on the Exchange pursuant to a regulatory services agreement. The Exchange is responsible for FINRA's performance under this regulatory services agreement.

[38] 17 CFR 240.10A–3.

(11) Each Fund will achieve commodities exposure through investment in a Subsidiary, and such investment may not exceed 25% of a Fund's total assets, as measured at the end of every quarter of a Fund's taxable year.

(12) Each Fund may invest up to an aggregate amount of 15% of its net assets in illiquid assets (calculated at the time of investment), including Rule 144A securities deemed illiquid by the Adviser, consistent with Commission guidance.

(13) A minimum of 100,000 Shares for each Fund will be outstanding at the commencement of trading on the Exchange.

The Exchange represents that all statements and representations made in the filing regarding (a) the description of the portfolio, (b) limitations on portfolio holdings or reference assets, or (c) the applicability of Exchange rules and surveillance procedures constitute continued listing requirements for listing the Shares on the Exchange. In addition, the issuer has represented to the Exchange that it will advise the Exchange of any failure by the Funds to comply with the continued listing requirements, and, pursuant to its obligations under Section 19(g)(1) of the Act, the Exchange will monitor for compliance with the continued listing requirements.[39] If a Fund is not in compliance with the applicable listing requirements, the Exchange will commence delisting procedures under NYSE Arca Equities Rule 5.5(m). This approval order is based on all of the Exchange's representations, including those set forth above, in the Notice, and in Amendment Nos. 1, 2, 3, and 4 to the proposed rule change. The Commission notes that the Funds and the Shares must comply with the requirements of NYSE Arca Equities Rule 8.600, including those set forth in this proposed rule change, to be listed and traded on the Exchange on an initial and continuing basis.

For the foregoing reasons, the Commission finds that the proposed rule change, as modified by Amendment Nos. 1, 2, 3, and 4 thereto, is consistent with Section 6(b)(5) of the Act[40] and Section 11A(a)(1)(C)(iii) of the Act[41] and the rules and regulations thereunder applicable to a national securities exchange.

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[42] that the proposed rule change (SR–NYSEArca–2015–107), as modified by Amendment Nos. 1, 2, 3, and 4 thereto, be, and it hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[43]

Robert W. Errett,

Deputy Secretary.

[FR Doc. 2016–07511 Filed 4–1–16; 8:45 am]

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[39] The Commission notes that certain other proposals for the listing and trading of managed fund shares include a representation that the exchange will "surveil" for compliance with the continued listing requirements. *See, e.g.,* Amendment No. 2 to SR-BATS-2016-04, available at: *http://www.sec.gov/comments/sr–bats–2016–04/bats201604–2.pdf.* In the context of this representation, it is the Commission's view that "monitor" and "surveil" both mean ongoing oversight of the Fund's compliance with the continued listing requirements. Therefore, the Commission does not view "monitor" as a more or less stringent obligation than "surveil" with respect to the continued listing requirements.

[40] 15 U.S.C. 78f(b)(5).

[41] 15 U.S.C. 78k–1(a)(1)(C)(iii).

[42] 15 U.S.C. 78s(b)(2).

[43] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–77465; File No. SR–FINRA–2015–056]

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Order Instituting Proceedings To Determine Whether to Approve or Disapprove Proposed Rule Change To Adopt FINRA Rule 2030 and FINRA Rule 4580 to Establish "Pay-To-Play" and Related Rules

March 29, 2016.

I. Introduction

On December 16, 2015, Financial Industry Regulatory Authority, Inc. ("FINRA") filed with the Securities and Exchange Commission ("SEC" or "Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act," "Exchange Act" or "SEA")[1] and Rule 19b–4 thereunder,[2] a proposed rule change to adopt FINRA Rules 2030 (Engaging in Distribution and Solicitation Activities with Government Entities) and 4580 (Books and Records Requirements for Government Distribution and Solicitation Activities) to establish "pay-to-play"[3] and related rules that would regulate the activities of member firms that engage in distribution or solicitation activities for compensation with government entities on behalf of investment advisers.

The proposed rule change was published for comment in the **Federal Register** on December 30, 2015.[4] The Commission received ten comment letters, from nine different commenters, in response to the proposed rule change.[5] On February 8, 2016, FINRA extended the time period in which the Commission must approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether to approve or disapprove the proposed rule change to March 29, 2016.[6] On March 28, 2016, FINRA filed a letter with the Commission stating that it has considered the comments received by the Commission, and that FINRA is not intending to make changes to the proposed rule text in response to the comments.[7] The Commission is publishing this order to institute proceedings pursuant to Exchange Act Section 19(b)(2)(B)[8] to determine whether to approve or disapprove the proposed rule change.

Institution of proceedings does not indicate that the Commission has reached any conclusions with respect to the proposed rule change, nor does it mean that the Commission will ultimately disapprove the proposed rule change. Rather, as discussed below, the Commission seeks additional input on the proposed rule change and issues presented by the proposal.

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[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] "Pay-to-play" practices typically involve a person making cash or in-kind political contributions (or soliciting or coordinating others to make such contributions) to help finance the election campaigns of state or local officials or bond ballot initiatives as a quid pro quo for the receipt of government contracts.

[4] *See* Exchange Act Rel. No. 76767 (Dec. 24, 2015), 80 FR 81650 (Dec. 30, 2015) (File No. SR–FINRA–2015–056) ("Notice").

[5] *See* Letters from David Keating, President, Center for Competitive Politics ("CCP"), dated Jan. 20, 2016 ("CCP Letter"); Clifford Kirsch and Michael Koffler, Sutherland Asbill & Brennan LLP, for the Committee of Annuity Insurers ("CAI"), dated Jan. 20, 2016 ("CAI Letter No. 1"); Clifford Kirsch and Michael Koffler, Sutherland Asbill & Brennan LLP, for the CAI, dated Feb. 5, 2016 ("CAI Letter No. 2"); David T. Bellaire, Executive Vice President and General Counsel, Financial Services Institute ("FSI"), dated Jan. 20, 2016 ("FSI Letter"); Tamara K. Salmon, Assistant General Counsel, Investment Company Institute ("ICI"), dated Jan. 20, 2016 ("ICI Letter"); Patrick J Moran, Esq., dated Dec. 29, 2015 ("Moran Letter"); Gary A. Sanders, Counsel and Vice President, National Association of Insurance and Financial Advisors ("NAIFA"), dated Jan. 20, 2016 ("NAIFA Letter"); Judith M. Shaw, President, North American Securities Administrators Association, Inc. ("NASAA"), dated Jan. 20, 2016 ("NASAA Letter"); Hugh D. Berkson, President, Public Investors Arbitration Bar Association ("PIABA"), dated Jan. 20, 2016 ("PIABA Letter"); and H. Christopher Bartolomucci and Brian J. Field, Bancroft PLLC, for the New York Republican State Committee and the Tennessee Republican Party ("State Parties"), dated Jan. 20, 2016 ("State Parties Letter").

[6] *See* Letter from Victoria Crane, Associate General Counsel, FINRA, to Lourdes Gonzalez, Assistant Director, Sales Practices, Division of Trading and Markets, Securities and Exchange Commission, dated Feb. 8, 2016.

[7] *See* Letter from Victoria Crane, Associate General Counsel, FINRA, to Brent J. Fields, Secretary, Securities and Exchange Commission, dated Mar. 28, 2016 ("FINRA Response Letter"). The FINRA Letter is available on FINRA's Web site at *http://www.finra.org,* at the principal office of FINRA, and at the Commission's Public Reference Room.

[8] 15 U.S.C. 78s(b)(2)(B).

II. Description of the Proposed Rule Change[9]

As described more fully in the Notice, FINRA is proposing a pay-to-play rule, Rule 2030,[10] that FINRA states is modeled on the Commission's Rule 206(4)–5 under the Investment Advisers Act of 1940 ("Advisers Act"), which addresses pay-to-play practices by investment advisers (the "SEC Pay-to-Play Rule").[11] The SEC Pay-to-Play Rule, among other things, prohibits an investment adviser and its covered associates from providing or agreeing to provide, directly or indirectly, payment to any person to solicit a government entity for investment advisory services on behalf of the investment adviser unless the person is a "regulated person."[12] A "regulated person," as defined in the SEC Pay-to-Play Rule, includes a FINRA member firm, provided that: (a) FINRA rules prohibit member firms from engaging in distribution or solicitation activities if political contributions have been made; and (b) the SEC finds, by order, that such rules impose substantially equivalent or more stringent restrictions on member firms than the SEC Pay-to-Play Rule imposes on investment advisers and that such rules are consistent with the objectives of the SEC Pay-to-Play Rule.[13] Therefore, based on this regulatory framework, FINRA is proposing its own pay-to-play rule to enable its member firms to continue to engage in distribution and solicitation activities for compensation with government entities on behalf of investment advisers, while at the same time deterring its member firms from engaging in pay-to-play practices.[14] FINRA also believes that its proposed rule would establish a comprehensive regime to regulate the activities of its member firms that engage in distribution or solicitation activities with government entities on behalf of investment advisers and would impose substantially equivalent restrictions on FINRA member firms engaging in distribution or solicitation activities to those the SEC Pay-to-Play Rule imposes on investment advisers.[15]

Furthermore, FINRA is proposing Rule 4580, which would impose recordkeeping requirements on FINRA member firms in connection with its pay-to-play rule that would allow examination of member firms' books and records for compliance with the pay-to-play rule.[16] FINRA believes that its proposed Rule 4580 is consistent with similar recordkeeping requirements imposed on investment advisers in connection with the SEC Pay-to-Play Rule.[17]

The following is an overview of some of the key provisions in FINRA's proposed rules.

A. Proposed Rule 2030(a): Limitation on Distribution and Solicitation Activities

Proposed Rule 2030(a) would prohibit a covered member from engaging in distribution or solicitation activities for compensation with a government entity on behalf of an investment adviser that provides or is seeking to provide investment advisory services to such government entity within two years after a contribution to an official of the government entity is made by the covered member or a covered associate, including a person who becomes a covered associate within two years after the contribution is made.[18] FINRA states that the terms and scope of the prohibitions in proposed Rule 2030(a) are modeled on the SEC Pay-to-Play Rule.[19]

FINRA explains that proposed Rule 2030(a) would not ban or limit the amount of political contributions a covered member or its covered associates could make.[20] Rather, FINRA states that, consistent with the SEC Pay-to-Play Rule, the proposed rule would impose a two-year "time out" on engaging in distribution or solicitation activities for compensation with a government entity on behalf of an investment adviser after the covered member or its covered associates make a contribution to an official of the government entity.[21] According to FINRA, the two-year time out period is intended to discourage covered members from participating in pay-to-play practices by requiring a cooling-off period during which the effects of a political contribution on the selection process can be expected to dissipate.[22]

1. Distribution Activities

FINRA states that, based on the definition of "regulated person" in the SEC Pay-to-Play Rule, it is required to adopt a rule that prohibits its member firms from engaging in distribution activities (as well as solicitation activities) with government entities if political contributions have been made.[23] FINRA also notes that certain language in the SEC Pay-to-Play Rule Adopting Release further supports the inclusion of distribution activities by broker-dealers in a FINRA pay-to-play rule.[24]

However, FINRA also explains that, based on the definition of a "covered investment pool" in proposed Rule 2030(g)(3),[25] the proposed rule would not apply to distribution activities related to registered investment companies that are not investment options of a government entity's plan or program.[26] Therefore, the proposed rule would apply to distribution activities involving unregistered pooled investment vehicles such as hedge funds, private equity funds, venture capital funds, and collective investment trusts, and registered pooled investment vehicles such as mutual funds, but only if those registered pools are an investment option of a participant-directed plan or program of a government entity.[27] FINRA also notes that, consistent with the SEC Pay-to-Play Rule, to the extent mutual fund distribution fees are paid by the fund pursuant to a 12b–1 plan, such payments would not be prohibited under the proposed rule as they would not constitute payments by the fund's investment adviser.[28] However, if the adviser pays for the fund's distribution out of its "legitimate profits," the proposed rule would generally be implicated.[29]

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[9] The proposed rule change, as described in this Item II, is excerpted, in part, from the Notice, which was substantially prepared by FINRA. *See supra* note 4.

[10] *See* Notice, 80 FR at 81650–51 (citing Advisers Act Release No. 3043 (July 1, 2010), 75 FR 41018 (July 14, 2010) (Political Contributions by Certain Investment Advisers) ("SEC Pay-to-Play Rule Adopting Release")).

[11] FINRA also published the proposed rule change in *Regulatory Notice* 14–50 (Nov. 2014) ("*Regulatory Notice* 14–50") and sought comment on the proposal. FINRA states that commenters were generally supportive of the proposed rule change, but also expressed some concerns. As such, FINRA revised the proposed rule change as published in *Regulatory Notice* 14–50 in response to those comments. As described more fully in the Notice, FINRA believes that the revisions it made more closely align FINRA's proposed rule with the SEC Pay-to-Play Rule and help reduce cost and compliance burden concerns raised by commenters. *See* Notice, 80 FR at 81651, n. 16.

[12] *See* Notice, 80 FR at 81650, 81656. *See also* SEC Pay-to-Play Rule 206(4)–5(a)(2)(i)(A).

[13] *See* Notice, 80 FR at 81650, n. 6 (citing SEC Pay-to-Play Rule 206(4)–5(f)(9)).

[14] *See* Notice, 80 FR at 81651, 81656.

[15] *See id.* at 81651, 81656.

[16] *See id.* at 81651, 81655–56.

[17] *See id.* at 81655, n. 60 (citing Advisers Act Rule 204–2(a)(18) and (h)(1)).

[18] *See* Notice, 80 FR at 81651.

[19] *See id.* (citing SEC Pay-to-Play Rule 206(4)–5(a)(1)).

[20] *See* Notice, 80 FR at 81651.

[21] *See id.*

[22] *Id.*

[23] *See id.* at 81660–61 (explaining that FINRA believes its proposed rule must apply to member firms engaging in distribution activities and that FINRA did not revise the proposed rule to remove references to the term distribution as requested by comments received in response to *Regulatory Notice* 14–50).

[24] *See id.* at 81660–61 (citing SEC Pay-to-Play Rule Adopting Release, 75 FR 41018, 41040 n. 298 where, according to FINRA, the Commission "clarif[ied] under what circumstances distribution payments would violate the SEC's Pay-to-Play Rule").

[25] *See id.* at 81654, n. 46 (proposed Rule 2030(g)(3) defines a "covered investment pool" to mean: "(A) Any investment company registered under the Investment Company Act that is an investment option of a plan or program of a government entity, or (B) Any company that would be an investment company under Section 3(a) of the Investment Company Act but for the exclusion provided from that definition by either Section 3(c)(1), 3(c)(7) or 3(c)(11) of that Act").

[26] *See* Notice, 80 FR at 81661, nn. 105–106 (explaining that the proposed rule would not apply to distribution activities relating to all registered pooled investment vehicles).

2. Solicitation Activities

FINRA also states that, consistent with the SEC Pay-to-Play Rule, proposed Rule 2030(g)(11) defines the term "solicit" to mean: "(A) With respect to investment advisory services, to communicate, directly or indirectly, for the purpose of obtaining or retaining a client for, or referring a client to, an investment adviser; and (B) With respect to a contribution or payment, to communicate, directly or indirectly, for the purpose of obtaining or arranging a contribution or payment." [30] FINRA also notes that, although the determination of whether a particular communication would be a solicitation would depend on the facts and circumstances relating to such communication, as a general proposition FINRA believes that any communication made under circumstances reasonably calculated to obtain or retain an advisory client would be considered a solicitation unless the circumstances otherwise indicate that the communication does not have the purpose of obtaining or retaining an advisory client.[31]

B. Proposed Rule 2030(b): Prohibition on Soliciting and Coordinating Contributions

Proposed Rule 2030(b) would also prohibit a covered member or covered associate from coordinating or soliciting any person or political action committee (PAC) to make any: (1) Contribution to an official of a government entity in respect of which the covered member is engaging in, or seeking to engage in, distribution or solicitation activities on behalf of an investment adviser; or (2) payment to a political party of a state or locality of a government entity with which the covered member is engaging in, or seeking to engage in, distribution or solicitation activities on behalf of an investment adviser.[32] FINRA states that this provision is modeled on a similar provision in the SEC Pay-to-Play Rule [33] and is intended to prevent covered members or covered associates from circumventing the proposed rule's prohibition on direct contributions to certain elected officials such as by "bundling" a large number of small employee contributions to influence an election, or making contributions (or payments) indirectly through a state or local political party.[34]

C. Proposed Rule 2030(c): Exceptions

FINRA's proposed pay-to-play rule contains three exceptions from the proposed rule's prohibitions: (1) *De minimis* contributions, (2) new covered associates, and (3) certain returned contributions.[35] FINRA states that these exceptions are modeled on similar exceptions in the SEC Pay-to-Play Rule.[36]

1. De Minimis Contribution Exception

Proposed Rule 2030(c)(1) would except from the rule's restrictions contributions made by a covered associate who is a natural person to government entity officials for whom the covered associate was entitled to vote at the time of the contributions, provided the contributions do not exceed $350 in the aggregate to any one official per election.[37] However, if the covered associate was not entitled to vote for the official at the time of the contribution, the contribution must not exceed $150 in the aggregate per election.[38] FINRA states that, consistent with the SEC Pay-to-Play Rule, under this exception, primary and general elections would be considered separate elections.[39] FINRA also explains that this exception is based on the theory that such contributions are typically made without the intent or ability to influence the selection process of the investment adviser.[40]

2. Exception for Certain New Covered Associates

The proposed rule would attribute to a covered member contributions made by a person within two years (or, in some cases, six months) of becoming a covered associate. However, proposed Rule 2030(c)(2) would provide an exception from the proposed rule's restrictions for covered members if a natural person made a contribution more than six months prior to becoming a covered associate of the covered member unless the covered associate engages in, or seeks to engage in, distribution or solicitation activities with a government entity on behalf of the covered member.[41] FINRA states that this exception is consistent with the SEC Pay-to-Play Rule [42] and is intended to balance the need for covered members to be able to make hiring decisions against the need to protect against individuals marketing to prospective employers their connections to, or influence over, government entities the employer might be seeking as clients.[43] FINRA also provides, with respect to the "look back" provisions in the proposed rules generally, the following illustrations of how the "look back" provisions work: if, for example, the contributions were made more than two years (or six months for new covered associates) prior to the employee becoming a covered associate, the time out has run.[44] According to FINRA, however, if the contribution was made less than two years (or six months, as applicable) from the time the person becomes a covered associate, the proposed rule would prohibit the covered member that hires or promotes the contributing covered associate from receiving compensation for engaging in distribution or solicitation activities on behalf of an investment adviser from the hiring or promotion date until the applicable period has run.[45] FINRA also states that the "look back" provisions are designed to prevent covered members from circumventing the rule by influencing the selection process by hiring persons who have made political contributions.[46]

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[27] *See id.* at 81661. *See also id.* at 81651, n. 17 and 81654, n. 46.

[28] *See id.* at 81661.

[29] *See id.* (noting, among other things, that "for private funds, third parties are often compensated by the investment adviser or its affiliated general partner").

[30] *See id.* at 81651, n. 18. *See also id.* at 81653, n. 40.

[31] *See id.*

[32] *See id.* at 81654. *See also id.* at 81662.

[33] *See id.* at 81654 (citing SEC Pay-to-Play Rule 206(4)–5(a)(2)).

[34] *See* Notice, 80 FR at 81654.

[35] *See id.*

[36] *See id.* (citing SEC Pay-to-Play Rule 206(4)–5(b)).

[37] *See* Notice, 80 FR at 81655.

[38] *See id.*

[39] *See id.* (citing SEC Pay-to-Play Rule Adopting Release, 75 FR 41018, 41034).

[40] *See* Notice, 80 FR at 81655.

[41] *See id.*

[42] *See id.* (citing SEC Pay-to-Play Rule 206(4)–5(b)(2)).

[43] *See* Notice, 80 FR at 81655.

[44] *See id.*

[45] *See id.*

[46] *See id.* at 81653, 81655.

3. Exception for Certain Returned Contributions

Proposed Rule 2030(c)(3) would provide an exception from the proposed rule's restrictions for covered members if the restriction is due to a contribution made by a covered associate and: (1) The covered member discovered the contribution within four months of it being made; (2) the contribution was less than $350; and (3) the contribution is returned within 60 days of the discovery of the contribution by the covered member.[47] FINRA explains that, consistent with the SEC Pay-to-Play Rule, this exception would allow a covered member to cure the consequences of an inadvertent political contribution.[48] The proposed rule would also provide that covered members with 150 or fewer registered representatives would be able to rely on this exception no more than two times per calendar year, while covered members with more than 150 registered representatives would be permitted to rely on this exception no more than three times per calendar year.[49] Furthermore, a covered member would not be able to rely on an exception more than once with respect to contributions by the same covered associate regardless of the time period, which is consistent with similar provisions in the SEC Pay-to-Play Rule.[50]

D. Proposed Rule 2030(d): Prohibitions as Applied to Covered Investment Pools

Proposed Rule 2030(d)(1) provides that a covered member that engages in distribution or solicitation activities with a government entity on behalf of a covered investment pool[51] in which a government entity invests or is solicited to invest shall be treated as though the covered member was engaging in or seeking to engage in distribution or solicitation activities with the government entity on behalf of the investment adviser to the covered investment pool directly.[52] Proposed Rule 2030(d)(2) provides that an investment adviser to a covered investment pool in which a government entity invests or is solicited to invest shall be treated as though that investment adviser were providing or seeking to provide investment advisory services directly to the government entity.[53] FINRA states that proposed Rule 2030(d) is modeled on a similar prohibition in the SEC Pay-to-Play Rule and would apply the prohibitions of the proposed rule to situations in which an investment adviser manages assets of a government entity through a hedge fund or other type of pooled investment vehicle.[54] Therefore, according to FINRA, the provision would extend the protection of the proposed rule to public pension plans that access the services of investment advisers through hedge funds and other types of pooled investment vehicles sponsored or advised by investment advisers as a funding vehicle or investment option in a government-sponsored plan, such as a 529 plan.[55]

E. Proposed Rule 2030(e): Prohibition on Indirect Contributions or Solicitations

Proposed Rule 2030(e) provides that it shall be a violation of Rule 2030 for any covered member or any of its covered associates to do anything indirectly that, if done directly, would result in a violation of the rule.[56] FINRA states that this provision is consistent with a similar provision in the SEC Pay-to-Play Rule[57] and would prevent a covered member or its covered associates from funneling payments through third parties, including, for example, consultants, attorneys, family members, friends or companies affiliated with the covered member as a means to circumvent the proposed rule.[58] FINRA also notes that, consistent with guidance provided by the SEC in connection with SEC Pay-to-Play Rule 206(4)–5(d), proposed Rule 2030(e) would require a showing of intent to circumvent the rule in order for such persons to trigger the two-year "time out."[59]

F. Proposed Rule 2030(f): Exemptions

Proposed Rule 2030(f) includes an exemptive provision for covered members, modeled on the exemptive provision in the SEC Pay-to-Play Rule, that would allow covered members to apply to FINRA for an exemption from the proposed rule's two-year time out.[60] As proposed, FINRA states that this provision would allow FINRA to exempt covered members, either conditionally or unconditionally, from the proposed rule's time out requirement where the covered member discovers contributions that would trigger the compensation ban after they have been made, and when imposition of the prohibition would be unnecessary to achieve the rule's intended purpose.[61] In determining whether to grant an exemption, FINRA would take into account varying facts and circumstances, outlined in the proposed rule, that each application presents (*e.g.*, the timing and amount of the contribution, the nature of the election, and the contributor's apparent intent or motive in making the contribution).[62] FINRA notes that this provision would provide covered members with an additional avenue by which to seek to cure the consequences of an inadvertent violation by the covered member or its covered associates that falls outside the limits of one of the proposed rule's exceptions.[63]

G. Proposed Rule 2030(g): Definitions

The following is an overview of some of the key definitions in FINRA's proposed rules.

1. Contributions

Proposed Rule 2030(g)(1) defines "contribution" to mean any gift, subscription, loan, advance, deposit of money, or anything of value made for the purpose of influencing the election for a federal, state or local office, and includes any payments for debts incurred in such an election or transition or inaugural expenses incurred by a successful candidate for state or local office.[64] FINRA states that this definition is consistent with the SEC Pay-to-Play Rule.[65] FINRA also states that it would not consider a donation of time by an individual to be a contribution, provided the covered member has not solicited the individual's efforts and the covered member's resources, such as office space and telephones, are not used.[66] FINRA further states that it would not consider a charitable donation made by a covered member to an organization that qualifies for an exemption from federal taxation under the Internal Revenue Code, or its equivalent in a foreign jurisdiction, at the request of an official of a government entity to be a contribution for purposes of the proposed rule.[67]

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[47] *See id.* at 81655.

[48] *See id.*

[49] *See id.* FINRA notes that these limitations are consistent with similar provisions in the SEC Pay-to-Play Rule 206(4)–5(b)(3), although the SEC Pay-to-Play Rule includes different allowances for larger and smaller investment advisers based on the number of employees they report on Form ADV. *See id.* at 81655, n. 59.

[50] *See* Notice, 80 FR at 81655.

[51] *See id.* at 81654, n. 46 (proposed Rule 2030(g)(3) defines a "covered investment pool" to mean: "(A) Any investment company registered under the Investment Company Act that is an investment option of a plan or program of a government entity, or (B) Any company that would be an investment company under Section 3(a) of the Investment Company Act but for the exclusion provided from that definition by either Section 3(c)(1), 3(c)(7) or 3(c)(11) of that Act").

[52] *See* Notice, 80 FR at 81654, n. 47 (FINRA notes that, consistent with the SEC Pay-to-Play Rule, under the proposed rule, if a government entity is an investor in a covered investment pool at the time a contribution triggering a two-year time out is made, the covered member must forgo any compensation related to the assets invested or committed by the government entity in the covered investment pool) (citing SEC Pay-to-Play Rule Adopting Release, 75 FR 41018, 41047).

[53] *See* Notice, 80 FR at 81654, n. 48 (FINRA states that it added proposed Rule 2030(d)(2) in response to comments on *Regulatory Notice* 14–50 to clarify, for purposes of the proposed rule, the relationship between an investment adviser to a covered investment pool and a government entity that invests in the covered investment pool).

[54] *See id.* at 81654 (citing SEC Pay-to-Play Rule 206(4)–5(c)).

[55] *See* Notice, 80 FR at 81654 (citing SEC Pay-to-Play Rule Adopting Release, 75 FR 41018, 41044, which discusses the applicability of the SEC Pay-to-Play Rule to covered investment pools).

[56] *See* Notice, 80 FR at 81654.

[57] *See id.* (citing SEC Pay-to-Play Rule 206(4)–5(d)).

[58] *See* Notice, 80 FR at 81654 (citing SEC Pay-to-Play Rule Adopting Release, 75 FR 41018, 41044, which discusses direct and indirect contributions or solicitations).

[59] *See* Notice, 80 FR at 81654.

[60] *See id.* at 81654–55.

[61] *See id.* at 81655.

[62] *See id.*

[63] *See id.*

2. Covered Associates

Proposed Rule 2030(g)(2) defines the term "covered associates" to mean: "(A) Any general partner, managing member or executive officer of a covered member, or other individual with a similar status or function; (B) Any associated person of a covered member who engages in distribution or solicitation activities with a government entity for such covered member; (C) Any associated person of a covered member who supervises, directly or indirectly, the government entity distribution or solicitation activities of a person in subparagraph (B) above; and (D) Any political action committee controlled by a covered member or a covered associate." [68] FINRA states that, as also noted in the SEC Pay-to-Play Rule Adopting Release, contributions made to influence the selection process are typically made not by the firm itself, but by officers and employees of the firm who have a direct economic stake in the business relationship with the government client.[69] For example, contributions by an "executive officer of a covered member" (as defined in proposed Rule 2030(g)(5)) would trigger the two-year time out.[70] FINRA also notes that whether a person is an executive officer would depend on his or her function or activities and not his or her title.[71] In addition, FINRA states that a covered associate would include a PAC controlled by the covered member or any of its covered associates, as a PAC is often used to make political contributions.[72] FINRA explains that it would consider a "covered member" (as defined in proposed Rule 2030(g)(4)) or its covered associates to have "control" over a PAC if the covered member or covered associate has the ability to direct or cause the direction of governance or operations of the PAC.[73]

3. Official of a Government Entity

FINRA explains that an "official" (as defined in proposed Rule 2030(g)(8)) of a "government entity" (as defined in proposed Rule 2030(g)(7))—both of which FINRA states are consistent with the SEC Pay-to-Play Rule definitions—would include an incumbent, candidate or successful candidate for elective office of a government entity if the office is directly or indirectly responsible for, or can influence the outcome of, the hiring of an investment adviser or has authority to appoint any person who is directly or indirectly responsible for, or can influence the outcome of, the hiring of an investment adviser.[74] FINRA also explains that government entities would include all state and local governments, their agencies and instrumentalities, and all public pension plans and other collective government funds, including participant-directed plans such as 403(b), 457, and 529 plans.[75]

FINRA further states that the two-year time out would be triggered by contributions, not only to elected officials who have legal authority to hire the adviser, but also to elected officials (such as persons with appointment authority) who can influence the hiring of the adviser.[76] FINRA notes that it is the scope of authority of the particular office of an official, not the influence actually exercised by the individual that would determine whether the individual has influence over the awarding of an investment advisory contract under the definition.[77]

H. Proposed Rule 4580: Recordkeeping Requirements

Proposed Rule 4580 would require covered members that engage in distribution or solicitation activities with a government entity on behalf of any investment adviser that provides or is seeking to provide investment advisory services to such government entity to maintain books and records that would allow FINRA to examine for compliance with its pay-to-play rule.[78] FINRA states that this provision is consistent with similar recordkeeping requirements imposed on investment advisers in connection with the SEC Pay-to-Play Rule.[79] The proposed rule would also require covered members to maintain a list or other record of certain specific information.[80] FINRA states that the proposed rule would, among other things, require that the direct and indirect contributions or payments made by the covered member or any of its covered associates be listed in chronological order and indicate the name and title of each contributor and each recipient of the contribution or payment, as well as the amount and date of each contribution or payment, and whether the contribution was the subject of the exception for returned contributions in proposed Rule 2030.[81]

III. Summary of Comments

As noted above, the Commission received ten comment letters, from nine different commenters, on the proposed rule change.[82] Six commenters generally expressed support for FINRA's proposal.[83] However, five of those commenters, while generally expressing support for the goals of the proposal, also raised certain concerns regarding various aspects of the proposal as drafted and recommended amendments to the proposal.[84] The other three commenters did not support the proposed rule as drafted based largely on concerns involving the First Amendment to the U.S. Constitution.[85] These comments are summarized below.[86] On March 28, 2016, FINRA filed a letter with the Commission stating that it has considered the comments received by the Commission, and that FINRA is not intending to make changes to the proposed rule text in response to the comments.[87]

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[64] *See id.* at 81652.

[65] *See id.*

[66] *See id.* (citing SEC Pay-to-Play Rule Adopting Release, 75 FR 41018, 41030).

[67] *See* Notice, 80 FR at 81652.

[68] *Id.* at 81653, n. 37.

[69] *See id.* (citing SEC Pay-to-Play Rule Adopting Release, 75 FR 41018, 41031).

[70] *See* Notice, 80 FR at 81653.

[71] *See id.*

[72] *See id.*

[73] *See id.*

[74] *See id.* at 81652.

[75] *See id.*

[76] *See id.*

[77] *See id.* (citing SEC Pay-to-Play Rule Adopting Release, 75 FR 41018, 41029 (discussing the terms "official" and "government entity").

[78] *See* Notice, 80 FR at 81655.

[79] *See id.* (citing Advisers Act Rule 204–2(a)(18) and (h)(1)).

[80] *See* Notice, 80 FR at 81655–56.

[81] *See id.*

[82] *See supra* note 5. CAI submitted two separate comment letters. *See* CAI Letter No. 1 and CAI Letter No. 2.

[83] *See* CAI Letter No. 1; CAI Letter No. 2; FSI Letter; ICI Letter; NAIFA Letter; NASAA Letter; and PIABA Letter.

[84] *See* CAI Letter No. 1; CAI Letter No. 2; FSI Letter; NAIFA Letter; NASAA Letter; and PIABA Letter. ICI did not raise additional concerns, but states that it is satisfied with FINRA's revisions and responses to the proposal as drafted in *Regulatory Notice* 14–50. *See* ICI Letter.

[85] *See* CCP Letter; Moran Letter; and State Parties Letter.

[86] For further detail, the comments that the Commission received on the Notice are available on the Commission's Web site at *http://www.sec.gov/comments/sr-finra-2015-056/finra2015056.shtml.*

A. First Amendment Comments

As noted above, three commenters oppose the proposed rule as drafted based on First Amendment concerns.[88] One commenter simply noted that he thinks FINRA may have some First Amendment issues and suggested that FINRA consider raising the amount and restricted political donations limitations to Congressional committee members that might influence government decision-making in the relevant area.[89]

Another commenter urged the Commission to reject FINRA's proposal because, according to that commenter, it impermissibly restricts core political speech in violation of the First Amendment.[90] As more fully explained in the commenter's letter, this commenter makes the following general arguments in support of its position: (1) That FINRA's proposal is not narrowly tailored to achieve a compelling government interest and thus cannot survive First Amendment scrutiny and (2) that the Commission should examine FINRA's proposal on its own merits and should not take comfort from the opinion of the United States Court of Appeals for the DC Circuit in *Blount* v. *SEC,* 61 F.3d 938 (D.C. Cir. 1995), which upheld MSRB's Rule G–37 against a First Amendment challenge.[91] More specifically, this commenter also makes the following arguments regarding FINRA's proposal, including that: (i) The proposed contributions limits are too low to allow citizens to exercise their constitutional right to participate in the political process; (ii) the rule discriminates between contributions to a candidate for whom an individual is entitled to vote and other candidates and cannot be squared with the Supreme Court's decision in *McCutcheon* v. *FEC,* 134 S. Ct. 1434 (2014); (iii) FINRA did not consider less restrictive alternatives; (iv) the "look-back" provisions are overbroad and insufficiently tailored to support the governmental interest claimed to be served by these rules; (v) the rules are preempted, with respect to federal elections, by the Federal Election Campaign Act; (vi) the rules are impermissibly vague and overbroad; and (vii) the rules are overbroad as applied to independent broker-dealers and their registered representatives who operate as independent contractors because they are not are tailored to the manner in which services are provided by financial advisors in the independent broker-dealer model.[92]

Similarly, another commenter opposes FINRA's proposed rule, stating that the proposal is unlawful and unconstitutional.[93] This commenter makes the following general arguments in support of its position. First, the commenter claims that the proposal is unlawful as it is *ultra vires* because Congress did not empower entities like FINRA—nor agencies like the SEC—to regulate federal political contributions and the proposal is a direct effort to deter member firms and their employees from engaging in conduct that is protected by the First Amendment and permitted by federal statute.[94] As more fully explained in the commenter's letter, this commenter makes the following claims in support of its argument, including that: (i) Campaign finance regulation has long been the exclusive province of Congress and the Federal Election Commission; (ii) Congress' comprehensive regime of political contribution limits forecloses FINRA's effort to regulate the same conduct; and (iii) even assuming Congress' contribution limits regime does not preclude FINRA from enacting its own rules, the proposal exceeds FINRA's authority to issue rules "designed to prevent fraudulent and manipulative acts and practices[.]"[95] Second, the commenter also claims that the proposal violates the First Amendment.[96] In support of this argument, the commenter states that FINRA cannot show that the proposal's restrictions are necessary to further a sufficiently important interest, and do so in a sufficient tailored manner.[97] As more fully explained in the commenter's letter, this commenter makes the following claims in support of its argument, including that: (i) The proposal severely burdens First Amendment rights and, therefore, FINRA bears an exceedingly high burden in establishing the constitutionality of the proposal; (ii) FINRA openly acknowledges that its proposal is a broad prophylactic measure that deters constitutionally protected conduct even when the government has no legitimate interest in doing so; (iii) the *Blount* opinion overlooked the disparate impact that a restriction like the FINRA proposal has on candidates; and (iv) the *Blount* opinion also did not discuss the constitutionality of anything comparable to the FINRA proposal's prohibition on coordinating or soliciting contributions "to a political party of a State or locality where the investment adviser is providing or seeking to provide investment advisory services to a government entity."[98]

Although not expressly opposing the proposed rules on First Amendment grounds, two other commenters also raise First Amendment comments.[99] One of these commenters submits that Rule 2030 is not closely drawn in terms of the conduct it prohibits, the persons who are subject to its restrictions, and the circumstances in which it is triggered.[100] This commenter claims that the proposed rule's ambiguity may contravene one of the "key animating principles of the Commission in crafting the [SEC Pay-to-Play Rule]" which, according to the commenter, was to ensure its rule was narrowly tailored to serve a compelling governmental interest, namely, the elimination of pay-to-play practices by investment advisers by preventing fraudulent acts and practices in the market for the provision of investment advisory services to government entities.[101] Another commenter states that the proposed rules may "inadvertently capture activity that does not present the risk of *quid pro quo* corruption," and this commenter believes that FINRA must "define the contours of its proposal as clearly and distinctly as possible to avoid an unnecessary limitation on one's First Amendment rights, especially in the area of political speech."[102]

B. Variable Annuity-Related Comments

Two commenters raised concerns regarding the application of the proposed rules to variable annuities.[103]

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[87] *See* FINRA Response Letter, *supra* note 7.

[88] *See* CCP Letter; Moran Letter; and State Parties Letter.

[89] *See* Moran Letter.

[90] *See* CCP Letter (also urging rejection of MSRB's proposed amendments to its pay-to-play rules, MSRB Rule G–37).

[91] *See* CCP Letter.

[92] *See id.*

[93] *See* State Parties Letter (attaching its opening and reply appellate briefs filed in the *Republican State Committee* v. *SEC,* No. 14–1194 on Dec. 22, 2014 and Feb. 4, 2015, respectively).

[94] *See* State Parties Letter.

[95] *See id.* (quoting 15 U.S.C. 78o–3(b)(6)).

[96] *See* State Parties Letter.

[97] *See id.*

[98] *See id.*

[99] *See* CAI Letter No. 1 and FSI Letter.

[100] *See* CAI Letter No. 1 (arguing that "[f]ailing to meet this objective of the [SEC Pay-to-Play Rule] would appear to be fatal to Rule 2030 inasmuch as the [SEC Pay-to-Play Rule] requires the Commission to find, by order, that Rule 2030 meets the objectives of the [SEC Pay-to-Play Rule]").

[101] *See* CAI Letter No. 1 (stating that in adopting the SEC Pay-to-Play Rule, "the Commission demonstrated its sensitivity to, and careful consideration of, potential First Amendment concerns because of the Rule's potential impact on political contributions").

[102] FSI Letter.

[103] *See* CAI Letter No. 1 and FSI Letter. *See also* CAI Letter No. 2 (reflecting CAI's suggested

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Both of these commenters requested, as a threshold matter, that FINRA confirm that Rule 2030 would not apply to variable annuities.[104] In support of one of these commenter's request that the proposed rule should not apply to the sales of variable annuity contracts which are supported by a separate account that invests in mutual funds, the commenter argues that the nature of variable annuities and the way investment options are selected does not implicate the investment advisory solicitation activities contemplated by the SEC Pay-to-Play Rule.[105] This same commenter claims that the relationship between a variable annuity contract holder and the investment adviser to a mutual fund supporting the variable annuity does not rise to a level such that it should implicate a pay-to-play obligation.[106] Another one of these commenter's claims, in support of its argument that Rule 2030 should not apply to variable annuities, is that compliance with Rule 2030 would be impractical for broker-dealers selling variable annuities in the government market.[107] This commenter also argues, for example, that a covered member selling a variable annuity, particularly where the separate account is a registered as a unit investment trust, cannot fairly be seen to be engaging in solicitation activities on behalf of all of the investment advisers and sub-advisers that manage the covered investment pools available as investment options under the separate account and subaccounts.[108]

One of these commenters also requests that proposed Rule 2030 be modified to, among other things, clarify that the distribution of a two-tiered product such as a variable annuity is not solicitation activity for an investment adviser and sub-advisers managing the funds available as investment options.[109] Furthermore, this same commenter states that if FINRA or the Commission determines that broker-dealers selling variable annuities constitute solicitation activities for purposes of Rule 2030, that determination raises a host of interpretive questions that, in this commenter's view, will require further guidance from FINRA or the Commission.[110]

C. Comments Regarding the Scope of the Proposed Rule

Two commenters also expressed concern that proposed rule 2030(d) would, in their view, re-characterize "ordinary" or "customary" distribution activities for covered investment pools as the solicitation of clients on behalf of the investment adviser to the covered investment pools.[111] One of these commenters requests that such customary distribution activity by member firms for covered investment pools sold to government entities *not* be treated as solicitation activity for an investment adviser for purposes of Rule 2030 simply because an investment adviser provides advisory services to a covered investment pool that is available as an investment option.[112] As more fully explained in the commenter's letter, the commenter claims, for example, that proposed Rule 2030(d) would recast "traditional" broker-dealer activity (*i.e.,* the offer and sale of covered investment pool securities pursuant to a selling or placement agent agreement) into something it is not: The solicitation of investment advisory services on behalf of an investment adviser.[113] This commenter also claims that the decision in *Goldstein* v. *SEC,* 451 F.3d 873 (D.C. Cir. 2006) and the Commission staff's interpretive position under Advisers Act Rule 206(4)–3 make proposed Rule 2030(d) impractical, as it would put selling firms in a contradictory position under FINRA rules and Advisers Act rules.[114] This commenter states that a broker-dealer that offers and sells interests in a mutual fund or private fund cannot be characterized as soliciting on behalf of the investment adviser to a covered investment pool.[115]

Similarly, another commenter expressed concern with the apparent application of proposed Rule 2030(d) to traditional brokerage sales of mutual funds and variable annuities to participant-directed government-sponsored retirement plans.[116] As more fully explained in the commenter's letter, this commenter states that it continues to be concerned that the provisions in proposed Rule 2030(d) "go beyond that which is required under Rule 206(4)–5(a)(2)(i) and Rule 206(4)–5(c) to the detriment of investors." [117] This same commenter also claims that mutual fund sales, as well as variable annuity sales, should be excluded, claiming that the proposed rules serve to redefine the sale of mutual funds as solicitation by a broker-dealer on behalf of an investment adviser and also conflicts with the realities of conventional mutual fund selling agreements.[118]

D. Comments Regarding the Inclusion of Distribution Activity in the Proposed Rule

One commenter generally expressed concern that Rule 2030 is unnecessarily ambiguous regarding the term distribution activities in Rule 2030(a).[119] This commenter claims that it is unclear what distribution activities "with" a government entity would be prohibited, what compensation is covered by the proposed rule and who must pay it, and when a member firm might be deemed to be acting "on behalf of" an investment adviser.[120] For example, this commenter states that the ambiguity of Rule 2030 may result in its misapplication in a variety of contexts.

This commenter also claims that, while the SEC Pay-to-Play Rule requires regulated persons to be subject to rules that prohibit them from engaging in certain distribution activities if certain political contributions have been made, Rule 206(4)–5 does not mandate the use of the term "distribution" in describing the conduct prohibited by the proposed rule, and suggested revised rule text reflecting that assertion.[121]

The commenter believes that its suggested revisions would, among other things, eliminate the potential concern that a selling firm might violate Rule 2030 unknowingly due to being deemed to be acting on behalf of investment advisers or sub-advisers of underlying funds with which it has no relationship.[122]

E. Comments Regarding Defined Terms Used in the Proposed Rules

Two commenters requested clarification of certain defined terms used in the proposed rules.[123] One commenter urged FINRA, or the Commission, to clarify the meaning of

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revisions to the certain language in some of FINRA's proposed rules).

[104] *See* CAI Letter No. 1 and FSI Letter.

[105] *See* FSI Letter (claiming that applying the proposed rule to variable annuities will significantly increase the compliance burden and as such may limit the options our members make available to 403(b) and 457 plans).

[106] *See* FSI Letter.

[107] *See* CAI Letter No. 1.

[108] *See id.*

[109] *See id.*

[110] *See id.*

[111] *See* CAI Letter No. 1 and FSI Letter.

[112] *See* CAI Letter No. 1.

[113] *See id.*

[114] *See id.*

[115] *See id.*

[116] *See* FSI Letter.

[117] FSI Letter.

[118] *See id.*

[119] *See* CAI Letter No. 1.

[120] *See id.*

[121] *See* CAI Letter No. 1 and CAI Letter No. 2 (reflecting CAI's suggested revisions to certain language in some of FINRA's proposed rules).

[122] *See* CAI Letter No. 1 (claiming that the commenter's suggested revisions would not result in any inappropriate narrowing of the scope of Rule 2030).

[123] *See* CAI Letter No. 1 and NAIFA Letter.

the term "instrumentality" as it is used in the definition of "government entity." [124] This commenter claims that, without additional guidance, covered members will continue to struggle with whether a contribution to a given entity should be treated as a contribution to an instrumentality of a state or state agency, thus triggering the two-year time out.[125] This same commenter also asked for clarification as to whether each and every "contribution" (as defined in proposed Rule 2030(g)(1)) is, by definition, also a "payment" (as defined in proposed Rule 2030(g)(9)).[126]

Another commenter requests that FINRA clarify the definition of a "covered associate" and clarify and delineate the positions that would qualify someone as a covered "official." [127] This commenter clams that, in response to the same definition of "covered associate" as used in the SEC Pay-to-Play Rule, many investment advisers and broker dealers have classified all of their representatives as covered associates regardless of whether they actually engage in the solicitation activity specified in the definition.[128] This commenter believes that additional clarification on when an associated person of a covered member would (or would not) qualify as a "covered associate" would ease compliance burdens, curtail overly broad limits on legitimate political activity, and increase the consistency of procedures amongst member firms who seek to comply with both the letter and the spirit of the proposed rule.[129] This same commenter requests additional details or guidance from the Commission with respect to this definition of "official" because, according to that commenter, that definition has caused, and will continue to spark confusion over exactly what offices subject the holder to be classified as an "official" given that the term is defined the same way in the SEC Pay-to-Play Rule.[130]

F. Comments Regarding PAC Contributions That Trigger the Anti-Circumvention Provision of the Proposed Rule

This commenter also claims that statements made by FINRA in the Notice regarding the proposed rule's anti-circumvention provision, proposed Rule 2030(e), combined with statements made in SEC staff guidance concerning whether contributions through PACs would violate the SEC Pay-to-Play Rule and section 208(d) of the Advisers Act, have the ability to chill contributions to PACs.[131] This commenter claims, for example, that prospective contributors who simply want to donate to a PAC have been hesitant to or restricted from doing so out of fear that they may be making an indirect contribution in violation of the SEC Pay-to-Play Rule.[132] Accordingly, this commenter requests further guidance from the Commission on the factors by which contributions to PACs would or would not trigger the anti-circumvention provision of the proposed rule.[133]

G. Comments Regarding the De Minimis Exception Under Proposed Rule 2030(c)

Several commenters raised concerns regarding the *de minimis* contribution exception under proposed Rule 2030(c)(1). One commenter requested that the $350 and $150 amounts "be raised substantially" in both SEC Pay-to-Play Rule and in proposed Rule 2030(c)(1), and further requested that the $350 limitation on the proposed exception for returned contributions under proposed Rule 2030(c)(3), be eliminated in both the SEC Pay-to-Play Rule and in FINRA's proposed rule.[134]

H. Comments Regarding the Grandfathering of Existing Accounts and Contracts

One commenter requested that FINRA clarify the application of the proposed rule to existing government entity accounts or contracts.[135] This commenter requests that, in the event that FINRA does not amend the application of its proposed rule to covered investment pools (as requested by this same commenter), FINRA apply the proposed rule only to accounts and variable contracts opened after the effective date.[136]

I. Comments Regarding Application of the Proposed Rules to the Independent Business Model

One commenter claims that its members will face difficulties in attempting to comply with the proposed rules, and that these difficulties stem, primarily, from a requirement for independent firms to implement a rule that is premised on the notion that solicitation of clients is performed pursuant to a centralized process controlled by the management of a registered investment adviser.[137] This same commenter claims that the lack of clarity as to the application of the SEC Pay-to-Play Rule to its members' business model, and the scope of government officials that trigger the requirements, has led some firms to adopt aggressive compliance programs that prohibit political contributions.[138] Accordingly, this commenter claims that absent clarity concerning the application of the proposed rule to the brokerage services provided to 403(b) and 457 plans, its members will be faced with the choice of either adopting similarly aggressive policies or prohibiting sales to government-sponsored retirement plans.[139]

J. Comments Regarding Proposed Rule 4580: Books and Records Requirements

One commenter claims that it continues to believe that not all payments to political parties or PACs should have to be maintained under the books and records requirements of proposed Rule 4580.[140] Rather, this commenter believes that only payments to political parties or PACs where the covered member or a covered associate (i) directs the political party or PAC to make a contribution to an official of a government entity which the covered member is soliciting on behalf of an investment adviser or (ii) knows that the political party or PAC is going to make a contribution to an official of a government entity which the covered member is soliciting on behalf of an investment adviser, should have to be maintained.[141] This commenter states that, while it appreciates FINRA's rationale for proposed Rule 4580, it believes the costs and burdens associated with the request far outweigh the benefits to FINRA in ensuring compliance with the rule and will lead to periodic "fishing expeditions" by FINRA examiners.[142]

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[124] *See* CAI Letter No. 1 (claiming that CAI's members have struggled to understand the contours of this term in the context of the SEC Pay-to-Play Rule).

[125] *See id.*

[126] *See* CAI Letter No. 1 (discussing Notice, 80 FR at 81654, n. 41: "Consistent with the SEC Pay-to-Play Rule, FINRA is including the broader term "payments," as opposed to "contributions," to deter a cover member from circumventing the proposed rule's prohibitions by coordinating indirect contributions to government officials by making payments to political parties").

[127] *See* NAIFA Letter.

[128] *See id.*

[129] *See id.*

[130] *See id.*

[131] *See id.*

[132] *See id.*

[133] *See id.*

[134] *See* CAI Letter No. 1.

[135] *See* FSI Letter.

[136] *See id.*

[137] *See* FSI Letter (claiming FSI believes that the SEC Pay-to-Play Rule has inadvertently captured non-corrupting activity and it fears that the proposed rule may do the same).

[138] *See id.*

[139] *See id.*

[140] *See* CAI Letter No. 1.

[141] *See id.*

K. Comments Requesting More Stringent Requirements in the Proposed Rules

Two commenters suggested including more stringent requirements in FINRA's proposed rule.[143] First, both commenters request that FINRA expand the applicability of its proposed rules to include state-registered investment advisers.[144] More specifically, one of these commenters suggests that FINRA include state-registered investment advisers in its definition of "investment adviser" for the purposes of its proposed rule.[145] These commenters note, for example, that FINRA states in the Notice that relatively few state-registered investment advisers manage public pension plans.[146] However, one of these commenters believes that this alone does not justify permitting FINRA-member firms that do manage public pension plans, but happen to work with smaller investment advisers, to engage in pay-to-play activities with no repercussions.[147] One of these commenters also claims that state-registered investment advisers now include larger firms and, therefore, it is much more likely that state-registered investment advisers advise or manage public pension plans or similar funds.[148]

Second, these same two commenters request that FINRA include a mandatory disgorgement provision for violations of its proposed rule.[149] These commenters state that they are disappointed that FINRA removed the mandatory disgorgement provisions from the proposal as outlined in FINRA's *Regulatory Notice* 14–50.[150] These commenters believe that a mandatory disgorgement provision would act as a significant deterrent to engaging in pay-to-play schemes, and it should remain in FINRA's final rule.[151]

Finally, one of these commenters believes that the current two-year cooling-off period in the proposal should be at least four years.[152] This commenter believes that the two-year cooling-off period does not adequately reduce the incentive for FINRA member firms to make political contributions in order to obtain pay-to-play advantages.[153] This commenter states FINRA should start with the most comprehensive rule, and that it would welcome the deterrent effect of a four-year cooling off period.[154]

IV. Proceedings To Determine Whether To Approve or Disapprove SR–FINRA–2015–056 and Grounds for Disapproval Under Consideration

The Commission is instituting proceedings pursuant to Exchange Act Section 19(b)(2)(B) to determine whether the proposed rule change should be approved or disapproved.[155] Institution of proceedings appears appropriate at this time in view of the legal and policy issues raised by the proposal. As noted above, institution of proceedings does not indicate that the Commission has reached any conclusions with respect to any of the issues involved. Rather, the Commission seeks and encourages interested persons to comment on the proposed rule change, including the comments received, and provide the Commission with additional comment to inform the Commission's analysis as to whether to approve or disapprove the proposal.

Pursuant to Exchange Act Section 19(b)(2)(B),[156] the Commission is providing notice of the grounds for disapproval under consideration. The Commission is instituting proceedings to allow for additional analysis of, and input from, commenters with regard to the proposed rule change's consistency with Section 15A of the Exchange Act, and in particular Sections 15A(b)(6) and 15A(b)(9). Exchange Act Section 15A(b)(6) [157] requires, among other things, that FINRA rules must be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest. In addition, Exchange Act Section 15A(b)(9) [158] requires that FINRA rules not impose any unnecessary or inappropriate burden on competition.

V. Request for Written Comments

The Commission requests that interested persons provide written submissions of their views, data, and arguments with respect to the issues raised by the proposed rule change. In particular, the Commission invites the written views of interested persons on whether the proposed rule change is inconsistent with Sections 15A(b)(6) and 15A(b)(9), or any other provision, of the Exchange Act, or the rules and regulations thereunder.

Although there do not appear to be any issues relevant to approval or disapproval that would be facilitated by an oral presentation of views, data, and arguments, the Commission will consider, pursuant to Rule 19b–4, any request for an opportunity to make an oral presentation.[159]

Interested persons are invited to submit written data, views, and arguments by April 25, 2016 concerning whether the proposed rule change should be approved or disapproved. Any person who wishes to file a rebuttal to any other person's submission must file that rebuttal by May 19, 2016. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov*. Please include File Number SR–FINRA–2015–056 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–FINRA–2015–056. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal office of FINRA. All comments received will be posted without change. The Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make publicly available.

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[142] *See id.*

[143] *See* NASAA Letter and PIABA Letter.

[144] *See* NASAA Letter and PIABA Letter.

[145] *See* NASAA Letter.

[146] *See* NASAA Letter and PIABA Letter.

[147] *See* PIABA Letter.

[148] *See* NASAA Letter.

[149] *See* NASAA Letter and PIABA Letter.

[150] *See* NASAA Letter and PIABA Letter.

[151] *See* NASAA Letter and PIABA Letter.

[152] *See* PIABA Letter.

[153] *See id.*

[154] *See id.*

[155] 15 U.S.C. 78s(b)(2). Exchange Act Section 19(b)(2)(B) provides that proceedings to determine whether to disapprove a proposed rule change must be concluded within 180 days of the date of publication of notice of the filing of the proposed rule change. The time for conclusion of the proceedings may be extended for up to an additional 60 days if the Commission finds good cause for such extension and publishes its reasons for so finding or if the self-regulatory organization consents to the extension.

[156] 15 U.S.C. 78s(b)(2)(B).

[157] 15 U.S.C. 78*o*–3(b)(6).

[158] 15 U.S.C. 78*o*–3(b)(9).

[159] Exchange Act Section 19(b)(2), as amended by the Securities Acts Amendments of 1975, Pub. L. 94–29, 89 Stat. 97 (1975), grants the Commission flexibility to determine what type of proceeding—either oral or notice and opportunity for written comments—is appropriate for consideration of a particular proposal by a self-regulatory organization. *See* Securities Acts Amendments of 1975, Report of the Senate Committee on Banking, Housing and Urban Affairs to Accompany S. 249, S. Rep. No. 75, 94th Cong., 1st Sess. 30 (1975).

All submissions should refer to File Number SR–FINRA–2015–056 and should be submitted on or before April 25, 2016. If comments are received, any rebuttal comments should be submitted by May 19, 2016.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[160]

Robert W. Errett,

Deputy Secretary.

[FR Doc. 2016–07513 Filed 4–1–16; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–77468; File No. SR–NYSE–2016–27]

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Adopting Requirements for the Collection and Transmission of Data Pursuant to Appendices B and C of the Regulation NMS Plan to Implement a Tick Size Pilot Program

March 29, 2016.

Pursuant to Section 19(b)(1)[1] of the Securities Exchange Act of 1934 (the "Act")[2] and Rule 19b–4 thereunder,[3] notice is hereby given that on March 25, 2016, New York Stock Exchange LLC ("NYSE" or the "Exchange") filed with the Securities and Exchange Commission (the "Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to adopt requirements for the collection and transmission of data pursuant to Appendices B and C of the Regulation NMS Plan to Implement a Tick Size Pilot Program ("Plan"). The proposed rule change is available on the Exchange's Web site at *www.nyse.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

On August 25, 2014, NYSE Group, Inc., on behalf of the Exchange, NYSE MKT LLC, NYSE Arca, Inc., the Bats BZX Exchange, Inc. f/k/a BATS Exchange, Inc. ("BZX"), BATS BYX Exchange, Inc. f/k/a BATS Y-Exchange, Inc. ("BYX"), Bats EDGA Exchange, Inc., Bats EDGX Exchange, Inc., Chicago Stock Exchange, Inc., Financial Industry Regulatory Authority, Inc. ("FINRA"), NASDAQ OMX BX, Inc., NASDAQ OMX PHLX LLC, and the Nasdaq Stock Market LLC (collectively "Participants"), filed with the Securities and Exchange Commission ("Commission"), pursuant to Section 11A of the Act[4] and Rule 608 of Regulation NMS thereunder,[5] the Plan to Implement a Tick Size Pilot Program ("Pilot").[6] The Participants filed the Plan to comply with an order issued by the Commission on June 24, 2014.[7] The Plan[8] was published for comment in the **Federal Register** on November 7, 2014, and approved by the Commission, as modified, on May 6, 2015.[9]

The Plan is designed to allow the Commission, market participants, and the public to study and assess the impact of increment conventions on the liquidity and trading of the common stocks of small-capitalization companies. Each Participant is required to comply, and to enforce compliance by its member organizations, as applicable, with the provisions of the Plan. As is described more fully below, the proposed rules would require member organizations to comply with the applicable data collection requirements of the Plan.[10]

The Pilot will include stocks of companies with $3 billion or less in market capitalization, an average daily trading volume of one million shares or less, and a volume weighted average price of at least $2.00 for every trading day. The Pilot will consist of a control group of approximately 1400 Pilot Securities and three test groups with 400 Pilot Securities in each (selected by a stratified random sampling process).[11] During the pilot, Pilot Securities in the control group will be quoted at the current tick size increment of $0.01 per share and will trade at the currently permitted increments. Pilot Securities in the first test group ("Test Group One") will be quoted in $0.05 minimum increments but will continue to trade at any price increment that is currently permitted.[12] Pilot Securities in the second test group ("Test Group Two") will be quoted in $0.05 minimum increments and will trade at $0.05 minimum increments subject to a midpoint exception, a retail investor order exception, and a negotiated trade exception.[13] Pilot Securities in the third test group ("Test Group Three") will be subject to the same quoting and trading increments as Test Group Two and also will be subject to the "Trade-at" requirement to prevent price matching by a market participant that is not displaying at a Trading Center's "Best Protected Bid" or "Best Protected Offer," unless an enumerated exception applies.[14] In addition to the exceptions provided under Test Group Two, an exception for Block Size orders and exceptions that mirror those under Rule 611 of Regulation NMS [15] will apply to the Trade-at requirement.

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[160] 17 CFR 200.30–3(a)(12); 17 CFR 200.30–3(a)(57).

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

[4] 15 U.S.C. 78k–1.

[5] 17 CFR 242.608.

[6] *See* Letter from Brendon J. Weiss, Vice President, Intercontinental Exchange, Inc., to Secretary, Commission, dated August 25, 2014.

[7] *See* Securities Exchange Act Release No. 72460 (June 24, 2014), 79 FR 36840 (June 30, 2014).

[8] Unless otherwise specified, capitalized terms used in this rule filing are based on the defined terms of the Plan.

[9] *See* Securities Exchange Act Release No. 74892 (May 6, 2015), 80 FR 27513 (May 13, 2015) ("Approval Order").

[10] The Exchange proposes to provide in the introduction paragraph to Rule 67 that the Rule shall be in effect during a pilot period to coincide with the pilot period for the Plan (including any extensions to the pilot period for the Plan).

[11] *See* Section V of the Plan for identification of Pilot Securities, including criteria for selection and grouping.

[12] *See* Section VI(B) of the Plan.

[13] *See* Section VI(C) of the Plan.

In approving the Plan, the Commission noted that the Trading Center data reporting requirements would facilitate an analysis of the effects of the Pilot on liquidity (*e.g.,* transaction costs by order size), execution quality (*e.g.,* speed of order executions), market maker activity, competition between trading venues (*e.g.,* routing frequency of market orders), transparency (*e.g.,* choice between displayed and hidden orders), and market dynamics (*e.g.,* rates and speed of order cancellations).[16] The Commission noted that Market Maker profitability data would assist the Commission in evaluating the effect, if any, of a widened tick increment on market marker profits and any corresponding changes in the liquidity of small-capitalization securities.[17]

Compliance With the Data Collection Requirements of the Plan

The Plan contains requirements for collecting and transmitting data to the Commission and to the public.[18] Specifically, Appendix B.I of the Plan (Market Quality Statistics) requires Trading Centers [19] to submit variety of market quality statistics, including information about an order's original size, whether the order was displayable or not, the cumulative number of orders, the cumulative number of shares of orders, and the cumulative number of shares executed within specific time increments, *e.g.,* from 30 seconds to less than 60 seconds after the time of order receipt. This information shall be categorized by security, order type, original order size, hidden status, and coverage under Rule 605.[20] Appendix B.I of the Plan also contains additional requirements for market orders and marketable limit orders, including the share-weighted average effective spread for executions of orders; the cumulative number of shares of orders executed with price improvement; and, for shares executed with price improvement, the share-weighted average amount per share that prices were improved.

Appendix B.II of the Plan (Market and Marketable Limit Order Data) requires Trading Centers to submit information relating to market orders and marketable limit orders, including the time of order receipt, order type, the order size, the National Best Bid and National Best Offer ("NBBO") quoted price, the NBBO quoted depth, the average execution price-share-weighted average, and the average execution time-share-weighted average.

The Plan requires Appendix B.I and B.II data to be submitted by Participants that operate a Trading Center, and by members of the Participants that operate Trading Centers. The Plan provides that each Participant that is the Designated Examining Authority ("DEA") for a member of the Participant that operates a Trading Center shall collect such data in a pipe delimited format, beginning six months prior to the Pilot Period and ending six months after the end of the Pilot Period. The Plan also requires the Participant, operating as DEA, to transmit this information to the SEC within 30 calendar days following month end.

The Exchange is proposing new Rule 67(b) to set forth the requirements for the collection and transmission of data pursuant to Appendices B and C of the Plan. Proposed Rule 67(b) is substantially similar to the proposed rule changes by BZX that were recently approved by the Commission to adopt BZX Rule 11.27(b) which also sets forth requirements for the collection and transmission of data pursuant to Appendices B and C of the Plan.[21]

Proposed Rule 67(b)(1) requires that a member organization that operates a Trading Center shall establish, maintain and enforce written policies and procedures that are reasonably designed to comply with the data collection and transmission requirements of Items I and II to Appendix B of the Plan, and a member organization that is a Market Maker shall establish, maintain and enforce written policies and procedures that are reasonably designed to comply with the data collection and transmission requirements of Item IV of Appendix B of the Plan and Item I of Appendix C of the Plan.

Proposed Rule 67(b)(2) provides that the Exchange shall collect and transmit to the SEC the data described in Items I and II of Appendix B of the Plan relating to trading activity in Pre-Pilot Data Collection Securities [22] and Pilot Securities on a Trading Center operated by the Exchange. The Exchange shall transmit such data to the SEC in a pipe delimited format, on a disaggregated basis by Trading Center, within 30 calendar days following month end for: (i) Each Pre-Pilot Data Collection Security for the period beginning six months prior to the Pilot Period through the trading day immediately preceding the Pilot Period; and (ii) each Pilot Security for the period beginning on the first day of the Pilot Period through six months after the end of the Pilot Period. The Exchange also shall make such data publicly available on the Exchange Web site on a monthly basis at no charge and will not identify the member organization that generated the data.

Appendix B.IV (Daily Market Maker Participation Statistics) requires a Participant to collect data related to

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[14] *See* Section VI(D) of the Plan.

[15] 17 CFR 242.611.

[16] *See* Approval Order, 80 FR at 27543.

[17] *Id.*

[18] The Exchange is also required by the Plan to establish, maintain, and enforce written policies and procedures that are reasonably designed to comply with applicable quoting and trading requirements specified in the Plan. The Exchange has separately proposed Rules 67(a) and 67(c)–(e) that would require compliance by its member organizations with the applicable quoting and trading requirements specified in the Plan. *See,* Securities Exchange Act Release No. 76229 (October 22, 2015), 80 FR 66065 (October 28, 2015) (SR–NYSE–2015–46) ("Quoting & Trading Rules Proposal"), as amended by Partial Amendment No. 1 to the Quoting & Trading Rules Proposal.

[19] The Plan incorporates the definition of a "Trading Center" from Rule 600(b)(78) of Regulation NMS. Regulation NMS defines a "Trading Center" as "a national securities exchange or national securities association that operates an SRO trading facility, an alternative trading system, an exchange market maker, an OTC market maker, or any other broker or dealer that executes orders internally by trading as principal or crossing orders as agent." *See* 17 CFR 242.600(b).

[20] 17 CFR 242.605.

[21] *See* Securities Exchange Act Release Nos. 77105 (February 10, 2016), 81 FR 8112 (February 17, 2016) (order approving SR–BATS–2015–102); and 77310 (March 7, 2016) (notice for comment and immediate effectiveness of SR–BATS–2016–27). The Exchange proposes a non-substantive difference to use the term "member organization" instead of "member" in proposed Rule 67.

[22] The Exchange is proposing *Supplementary Material* .90 to proposed Rule 67(b) to define "Pre-Pilot Data Collection Securities" as the securities designated by the Participants for purposes of the data collection requirements described in Items I, II and IV of Appendix B and Item I of Appendix C of the Plan for the period beginning six months prior to the Pilot Period and ending on the trading day immediately preceding the Pilot Period. The Participants shall compile the list of Pre-Pilot Data Collection Securities by selecting all NMS stocks with a market capitalization of $5 billion or less, a Consolidated Average Daily Volume (CADV) of 2 million shares or less and a closing price of $1 per share or more. The market capitalization and the closing price thresholds shall be applied to the last day of the pre-pilot measurement period, and the CADV threshold shall be applied to the duration of the pre-pilot measurement period. The pre-pilot measurement period shall be the three calendar months ending on the day when the Pre-Pilot Data Collection Securities are selected. The Pre-Pilot Data Collection Securities shall be selected thirty days prior to the commencement of the six-month pre-pilot period. On the trading day that is the first trading day of the Pilot Period through six months after the end of the Pilot Period, the data collection requirements will become applicable to the Pilot Securities only.

Market Maker participation from each Market Maker[23] engaging in trading activity on a Trading Center operated by the Participant. The Exchange is therefore proposing Rule 67(b)(3) to gather data about a Market Maker's participation in Pilot Securities and Pre-Pilot Data Collection Securities. Proposed Rule 67(b)(3)(A) provides that a member organization that is a Market Maker shall collect and transmit to their DEA data relating to Item IV of Appendix B of the Plan with respect to activity conducted on any Trading Center in Pilot Securities and Pre-Pilot Data Collection Securities in furtherance of its status as a registered Market Maker, including a Trading Center that executes trades otherwise than on a national securities exchange, for transactions that have settled or reached settlement date. The proposed rule requires Market Makers to transmit such data in a format required by their DEA, by 12:00 p.m. EST on T+4 for: (i) Transactions in each Pre-Pilot Data Collection Security for the period beginning six months prior to the Pilot Period through the trading day immediately preceding the Pilot Period; and (ii) for transactions in each Pilot Security for the period beginning on the first day of the Pilot Period through six months after the end of the Pilot Period.

The Exchange understands that some member organizations may utilize a DEA that is not a Participant to the Plan and that their DEA would not be subject to the Plan's data collection requirements. In such case, a DEA that is not a Participant of the Plan would not be required to collect the required data and may not establish procedures for which member organizations it acts a DEA for to report the data required under subparagraphs (b)(3)(A) of Rule 67 and in accordance with Item IV of Appendix B of the Plan. Therefore, the Exchange proposes to adopt subparagraph (b)(3)(B) to Rule 67 to require a member organization that is a Market Maker whose DEA is not a Participant to the Plan to transmit the data collected pursuant to paragraph (3)(A) of Rule 67(b) to FINRA, which is a Participant to the Plan and is to collect data relating to Item IV of Appendix B of the Plan on behalf of the Participants. For Market Makers for which it is the DEA, FINRA issued a Market Maker Transaction Data Technical Specification to collect data on Pre-Pilot Data Collection Securities and Pilot Securities from Trading Centers to comply with the Plan's data collection requirements.[24]

Proposed Rule 67(b)(3)(C) provides that the Exchange shall transmit the data collected by the DEA or FINRA pursuant to Rule 67(b)(3)(A) and (B) above relating to Market Maker activity on a Trading Center operated by the Exchange to the SEC in a pipe delimited format within 30 calendar days following month end. The Exchange shall also make such data publicly available on the Exchange Web site on a monthly basis at no charge and shall not identify the Trading Center that generated the data.

Appendix C.I (Market Maker Profitability) requires a Participant to collect data related to Market Maker profitability from each Market Maker for which it is the DEA. Specifically, the Participant is required to collect the total number of shares of orders executed by the Market Maker; the raw Market Maker realized trading profits, and the raw Market Maker unrealized trading profits. Data shall be collected for dates starting six months prior to the Pilot Period through six months after the end of the Pilot Period. This data shall be collected on a monthly basis, to be provided in a pipe delimited format to the Participant, as DEA, within 30 calendar days following month end. Appendix C.II (Aggregated Market Maker Profitability) requires the Participant, as DEA, to aggregate the Appendix C.I data, and to categorize this data by security as well as by the control group and each Test Group. That aggregated data shall contain information relating to total raw Market Maker realized trading profits, volume-weighted average of raw Market Maker realized trading profits, the total raw Market Maker unrealized trading profits, and the volume-weighted average of Market Maker unrealized trading profits.

The Exchange is therefore proposing Rule 67(b)(4) to set forth the requirements for the collection and transmission of data pursuant to Appendix C.I of the Plan. Proposed Rule 67(b)(4)(A) requires that a member organization that is a Market Maker shall collect and transmit to their DEA the data described in Item I of Appendix C of the Plan with respect to executions in Pilot Securities that have settled or reached settlement date that were executed on any Trading Center. The proposed rule also requires member organizations to provide such data in a format required by their DEA by 12 p.m. EST on T+4 for executions during and outside of Regular Trading Hours in each: (i) Pre-Pilot Data Collection Security for the period beginning six months prior to the Pilot Period through the trading day immediately preceding the Pilot Period; and (ii) Pilot Security for the period beginning on the first day of the Pilot Period through six months after the end of the Pilot Period.

For the same reasons set forth above for subparagraph (b)(3)(B) to Rule 67, the Exchange proposes to adopt subparagraph (b)(4)(B) to Rule 67 to require a member organization that is a Market Maker whose DEA is not a Participant to the Plan to transmit the data collected pursuant to paragraph (4)(A) of Rule 67(b) to FINRA. As stated above, FINRA is a Participant to the Plan and is to collect data relating to Item I of Appendix C of the Plan on behalf of the Participants. For Market Makers for which it is the DEA, FINRA issued a Market Maker Transaction Data Technical Specification to collect data on Pre-Pilot Data Collection Securities and Pilot Securities from Trading Centers to comply with the Plan's data collection requirements.[25]

The Exchange is also adopting a rule setting forth the manner in which Market Maker participation will be calculated. Item III of Appendix B of the Plan requires each Participant that is a national securities exchange to collect daily Market Maker registration statistics categorized by security, including the following information: (i) Ticker symbol; (ii) the Participant exchange; (iii) number of registered market makers; and (iv) the number of other registered liquidity providers. Therefore, the Exchange proposes to adopt Rule 67(b)(5) providing that the Exchange shall collect and transmit to the SEC the data described in Item III of Appendix B of the Plan relating to daily Market Maker registration statistics in a pipe delimited format within 30 calendar days following month end for: (i) Transactions in each Pre-Pilot Data Collection Security for the period beginning six months prior to the Pilot Period through the trading day immediately preceding the Pilot Period; and (ii) transactions in each Pilot Security for the period beginning on the first day of the Pilot Period through six months after the end of the Pilot Period.

The Exchange is also proposing, through *Supplementary Material* to proposed Rule 67(b), to clarify other aspects of the data collection requirements. *Supplementary Material* .10 to proposed Rule 67(b) relates to the use of the retail investor order flag for purposes of Appendix B.II(n) reporting. The Plan currently states that market and marketable limit orders shall include a "yes/no" field relating to the Retail Investor Order flag. The Exchange is proposing *Supplementary Material* .10 to proposed Rule 67(b) to clarify that, for purposes of the reporting requirement in Appendix B.II(n), a Trading Center shall report "y" to their DEA where it is relying upon the Retail Investor Order exception to Test Groups Two and Three, and "n" for all other instances.[26] The Exchange believes that requiring the identification of a Retail Investor Orders only where the exception may apply (*i.e.,* Pilot Securities in Test Groups Two and Three) is consistent with Appendix B.II(n).

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[23] The Plan defines a Market Maker as "a dealer registered with any self-regulatory organization, in accordance with the rules thereof, as (i) a market maker or (ii) a liquidity provider with an obligation to maintain continuous, two-sided trading interest."

[24] FINRA members for which FINRA is their DEA should refer to the Market Maker Transaction Data Technical Specification on the FINRA Web site at *http://www.finra.org/sites/default/files/market-maker-transaction-data-tech-specs.pdf.*

[25] *Id.*

Supplementary Material .20 to proposed Rule 67(b) requires that member organizations populate a field to identify to their DEA whether an order is affected by the bands in place pursuant to the National Market System Plan to Address Extraordinary Market Volatility.[27] Pursuant to the Limit-Up Limit-Down Plan, between 9:30 a.m. and 4:00 p.m., the Securities Information Processor ("SIP") calculates a lower price band and an upper price band for each NMS stock. These price bands represent a specified percentage above or below the stock's reference price, which generally is calculated based on reported transactions in that stock over the preceding five minutes. When one side of the market for an individual security is outside the applicable price band, the SIP identifies that quotation as non-executable. When the other side of the market reaches the applicable price band (*e.g.,* the offer reaches the lower price band), the security enters a Limit State. The stock would exit a Limit State if, within 15 seconds of entering the Limit State, all Limit State Quotations were executed or canceled in their entirety. If the security does not exit a Limit State within 15 seconds, then the primary listing exchange declares a five-minute trading pause, which would be applicable to all markets trading the security.

The Exchange and the other Participants have determined that it is appropriate to create a new flag for reporting orders that are affected by the Limit-Up Limit-Down bands. Accordingly, a Trading Center shall report a value of "Y" to their DEA when the ability of an order to execute has been affected by the Limit-Up Limit-Down bands in effect at the time of order receipt. A Trading Center shall report a value of "N" to their DEA when the ability of an order to execute has not been affected by the Limit-Up Limit-Down bands in effect at the time of order receipt.

Supplementary Material .20 to proposed Rule 67(b) also requires, for securities that may trade in a foreign market, that the Participant indicate whether the order was handled domestically, or routed to a foreign venue. Accordingly, the Participant will indicate, for purposes of Appendix B.I, whether the order was: (1) Fully executed domestically, or (2) fully or partially executed on a foreign market. For purposes of Appendix B.II, the Participant will classify all orders in securities that may trade in a foreign market Pilot and Pre-Pilot Securities as: (1) Directed to a domestic venue for execution; (2) may only be directed to a foreign venue for execution; or (3) was fully or partially directed to a foreign venue at the discretion of the member. The Exchange believes that this proposed flag will better identify orders in securities that may trade in a foreign market, as such orders that were routed to foreign venues would not be subject to the Plan's quoting and trading requirements, and could otherwise compromise the integrity of the data.

Supplementary Material .30 to proposed Rule 67(b) relates to the time ranges specified in Appendix B.I.a(14), B.I.a(15), B.I.a(21) and B.I.a(22).[28] The Exchange and the other Participants have determined that it is appropriate to change the reporting times in these provisions to require more granular reporting for these categories. Accordingly, the Exchange proposes to add Appendix B.I.a(14A), which will require Trading Centers to report the cumulative number of shares of orders executed from 100 microseconds to less than 1 millisecond after the time of order receipt. Appendix B.I.a(15) will be changed to require the cumulative number of shares of orders executed from 1 millisecond to less than 100 milliseconds after the time of order receipt. The Exchange also proposes to add Appendix B.I.a(21A), which will require Trading Centers to report the cumulative number of shares of orders canceled from 100 microseconds to less than 1 millisecond after the time of order receipt. Appendix B.I.a(22) will be changed to require the cumulative number of shares of orders canceled from 1 millisecond to less than 100 milliseconds after the time of order receipt. The Exchange believes that these new reporting requirements will contribute to a meaningful analysis of the Pilot by producing more granular data on these points.[29]

Supplementary Material .40 to proposed Rule 67(b) relates to the relevant measurement for purposes of Appendix B.I.a(31)–(33) reporting. Currently, the Plan states that this data shall be reported as of the time of order execution. The Exchange and the other Participants believe that this information should more properly be captured at the time of order receipt as evaluating share-weighted average prices at the time of order receipt is more consistent with the goal of observing the effect of the Pilot on the liquidity of Pilot Securities. The Exchange is therefore proposing to make this change through *Supplementary Material* .40 to proposed Rule 67(b).[30] This change will make these provisions consistent with the remainder of the statistics in Appendix B.I.a, which are all based on order receipt.

Supplementary Material .50 to proposed Rule 67(b) addresses the status of not-held and auction orders for purposes of Appendix B.I reporting. Currently, Appendix B.I sets forth eight categories of orders, including market orders, marketable limit orders, and inside-the-quote resting limit orders, for which daily market quality statistics must be reported. Currently, Appendix B.I does not provide a category for not held orders, clean cross orders, auction orders, or orders received when the NBBO is crossed. The Exchange and the other Participants have determined that it is appropriate to include separate categories for these orders types for purposes of Appendix B reporting. The Exchange is therefore proposing *Supplementary Material* .50 to proposed Rule 67(b) to provide that not held orders shall be included as an order type for purposes of Appendix B reporting, and shall be assigned the number (18). Clean cross orders shall be included as an order type for purposes of Appendix B reporting, and shall be assigned the number (19); auction orders shall be included an as order type for purposes of Appendix B reporting, and shall be assigned the number (20); and orders that cannot otherwise be classified, including, for example, orders received when the NBBO is crossed shall be included as an order type for purposes of Appendix B reporting, and shall be assigned the number (21). All of these orders already are included in the scope of Appendix B; however, without this proposed change, these order types would be categorized with other orders, such as regular held orders, that should be able to be fully executed upon receipt, which would compromise the value of this data.

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[26] FINRA, on behalf of the Plan Participants submitted a letter to Commission requesting exemption from certain provisions of the Plan related to data collection. *See* letter from Marcia E. Asquith, Senior Vice President and Corporate Secretary, FINRA dated December 9, 2015 to Robert W. Errett, Deputy Secretary, Commission ("Exemption Request"). The Commission, pursuant to its authority under Rule 608(e) of Regulation NMS, granted BZX a limited exemption from the requirement to comply with certain provisions of the Plan as specified in the letter and noted herein. *See* letter from David Shillman, Associate Director, Division of Trading and Markets, Commission to Eric Swanson, General Counsel, BZX, dated February 10, 2016 ("Exemption Letter").

[27] *See* National Market System Plan to Address Extraordinary Market Volatility, Securities Exchange Act Release No. 67091 (May 31, 2012), 77 FR 33498 (June 6, 2012) (File No. 4–631) ("Limit-Up Limit-Down Plan").

[28] Specifically, Appendix B.I.a(14) requires reporting of the cumulative number of shares of orders executed from 0 to less than 100 microseconds after the time of order receipt; Appendix B.I.a(15) requires reporting of the cumulative number of shares of orders executed from 100 microseconds to less than 100 milliseconds after the time of order receipt; Appendix B.I.a(21) requires reporting of the cumulative number of shares of orders cancelled from 0 to less than 100 microseconds after the time of order receipt; and Appendix B.I.a(22) requires reporting of the cumulative number of shares of orders cancelled from 100 microseconds to less than 100 milliseconds after the time of order receipt.

[29] The Commission granted BZX an exemption from Rule 608(c) related to this provision. *See* Exemption Letter, *supra* note 26.

[30] The Commission granted BZX an exemption from Rule 608(c) related to this provision. *See* Exemption Letter, *supra* note 26.

The Exchange is proposing *Supplementary Material* .60 to proposed Rule 67(b) to clarify the scope of the Plan as it relates to member organizations that only execute orders limited purposes. Specifically, The Exchange and the other Participants believe that a member organization that only executes orders otherwise than on a national securities exchange for the purpose of: (1) Correcting a bona fide error related to the execution of a customer order; (2) purchasing a security from a customer at a nominal price solely for purposes of liquidating the customer's position; or (3) completing the fractional share portion of an order [31] shall not be deemed a Trading Center for purposes of Appendix B to the Plan. The Exchange is therefore proposing *Supplementary Material* .50 [sic] to proposed Rule 67(b) to make this clarification.

The Exchange is proposing *Supplementary Material* .70 to proposed Rule 67(b) to clarify that, for purposes of the Plan, Trading Centers must begin the data collection required pursuant to Appendix B.I.a(1) through B.II.(y) of the Plan and Item I of Appendix C of the Plan on April 4, 2016. While the Exchange or the member organization's DEA will provide the information required by Appendix B and C of the Plan during the Pilot Period, the requirement that the Exchange or their DEA provide information to the SEC within 30 days following month end and make such data publicly available on its Web site pursuant to Appendix B and C shall commence six months prior to the beginning of the Pilot Period.[32]

The Exchange is proposing *Supplementary Material* .80 to proposed Rule 67(b) to address the requirement in Appendix C.I(b) of the Plan that the calculation of raw Market Maker realized trading profits utilize a last in, first out ("LIFO")-like method to determine which share prices shall be used in that calculation. The Exchange and the other Participants believe that it is more appropriate to utilize a methodology that yields LIFO-like results, rather than utilizing a LIFO-like method, and the Exchange is therefore proposing *Supplementary Material* .80 to proposed Rule 67(b) to make this change.[33] The Exchange is proposing that, for purposes of Item I of Appendix C, the Participants shall calculate daily Market Maker realized profitability statistics for each trading day on a daily LIFO basis using reported trade price and shall include only trades executed on the subject trading day. The daily LIFO calculation shall not include any positions carried over from previous trading days. For purposes of Item I.c of Appendix C, the Participants shall calculate daily Market Maker unrealized profitability statistics for each trading day on an average price basis. Specifically, the Participants must calculate the volume weighted average price of the excess (deficit) of buy volume over sell volume for the current trading day using reported trade price. The gain (loss) of the excess (deficit) of buy volume over sell volume shall be determined by using the volume weighted average price compared to the closing price of the security as reported by the primary listing exchange. In reporting unrealized trading profits, the Participant shall also report the number of excess (deficit) shares held by the Market Maker, the volume weighted average price of that excess (deficit) and the closing price of the security as reported by the primary listing exchange used in reporting unrealized profit.[34]

Finally, the Exchange is proposing *Supplementary Material* .90 to proposed Rule 67(b) to address the securities that will be used for data collection purposes prior to the commencement of the Pilot Period. The Exchange and the other Participants have determined that it is appropriate to collect data for a group of securities that is larger, and using different quantitative thresholds, than the group of securities that will be Pilot Securities. The Exchange is therefore proposing *Supplementary Material* .90 to proposed Rule 67(b) to define "Pre-Pilot Data Collection Securities" as the securities designated by the Participants for purposes of the data collection requirements described in Items I, II and IV of Appendix B and Item I of Appendix C of the Plan for the period beginning six months prior to the Pilot Period and ending on the trading day immediately preceding the Pilot Period. The Participants shall compile the list of Pre-Pilot Data Collection Securities by selecting all NMS stocks with a market capitalization of $5 billion or less, a Consolidated Average Daily Volume (CADV) of 2 million shares or less and a closing price of $1 per share or more. The market capitalization and the closing price thresholds shall be applied to the last day of the pre-pilot measurement period, and the CADV threshold shall be applied to the duration of the pre-pilot measurement period. The pre-pilot measurement period shall be the three calendar months ending on the day when the Pre-Pilot Data Collection Securities are selected. The Pre-Pilot Data Collection Securities shall be selected thirty days prior to the commencement of the six-month pre-pilot period. On the trading day that is the first trading day of the Pilot Period through six months after the end of the Pilot Period, the data collection requirements will become applicable to the Pilot Securities only. A Pilot Security will only be eligible to be included in a Test Group if it was a Pre-Pilot Data Collection Security.

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[31] The Exchange notes that where a member organization purchases a fractional share from a customer, the Trading Center that executes the remaining whole shares of that customer order would subject to subject to Appendix B of the Plan.

[32] In its order approving the Plan, the SEC noted that the Pilot shall be implemented within one year of the date of publication of its order, *e.g.*, by May 6, 2016. *See* Approval Order, 80 FR at 27545. However, on November 6, 2015, the SEC extended the implementation date approximately five months to October 3, 2016. *See* Securities Exchange Act Release No. 76382 (November 6, 2015), 80 FR 70284 (File No. 4–657) (Order Granting Exemption From Compliance With the National Market System Plan To Implement a Tick Size Pilot Program). *See also* Letter from Brendon J. Weiss, Co-Head, Government Affairs, Intercontinental Exchange/NYSE, to Brent J. Fields, Secretary, Commission, dated November 4, 2015 (requesting the data collection period be extended until six months after the requisite SRO rules are approved, and the implementation data of the Tick Size Pilot until six months thereafter).

[33] Appendix C.I currently requires Market Maker profitability statistics to include (1) the total number of shares of orders executed by the Market Maker; (2) raw Market Maker realized trading profits, which is the difference between the market value of Market Maker shares and the market value of Market Maker purchases, using a LIFO-like method; and (3) raw Market Maker unrealized trading profits, which is the difference between the purchase or sale price of the end-of-day inventory position of the Market Maker and the Closing Price. In the case of a short position, the Closing Price from the sale will be subtracted; in the case of a long position, the purchase price will be subtracted from the Closing Price.

[34] The Commission granted BZX an exemption from Rule 608(c) related to this provision. *See* Exemption Letter, *supra* note 26.

Implementation Date

The proposed rule change will be effective on April 4, 2016.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act[35] in general, and furthers the objectives of Section 6(b)(5) of the Act[36] in particular, in that it is designed to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest.

The Exchange believes that this proposal is consistent with the Act because it implements and clarifies the provisions of the Plan, and is designed to assist the Exchange in meeting its regulatory obligations pursuant of the Plan. In approving the Plan, the SEC noted that the Pilot was an appropriate, data-driven test that was designed to evaluate the impact of a wider tick size on trading, liquidity, and the market quality of securities of smaller capitalization companies, and was therefore in furtherance of the purposes of the Act. The Exchange believes that this proposal is in furtherance of the objectives of the Plan, as identified by the SEC, and is therefore consistent with the Act because the proposal implements and clarifies the requirements of the Plan and applies specific obligations to member organizations in furtherance of compliance with the Plan.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange notes that the proposed rule change implements the provisions of the Plan, and is designed to assist the Exchange in meeting its regulatory obligations pursuant of the Plan. The Exchange also notes that the data collection requirements for member organizations that operate Trading Centers will apply equally to all such member organizations, as will the data collection requirements for Market Makers.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the proposed rule change does not (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act[37] and Rule 19b–4(f)(6) thereunder.[38]

A proposed rule change filed pursuant to Rule 19b–4(f)(6) under the Act[39] normally does not become operative for 30 days after the date of its filing. However, Rule 19b–4(f)(6)(iii)[40] permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay. The Commission believes that waiver of the operative delay is consistent with the protection of investors and the public interest because it would allow the Exchange to implement the proposed amendments on April 4, 2016, the date upon which the data collection requirements of the Plan become effective.[41] Therefore, the Commission hereby waives the operative delay and designates the proposal operative on April 4, 2016.[42]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov*. Please include File Number SR–NYSE–2016–27 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSE–2016–27. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSE–2016–27, and should be submitted on or before April 25, 2016.

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[35] 15 U.S.C. 78f(b).

[36] 15 U.S.C. 78f(b)(5).

[37] 15 U.S.C. 78s(b)(3)(A).

[38] 17 CFR 240.19b–4(f)(6). As required under Rule 19b–4(f)(6)(iii), the Exchange provided the Commission with written notice of its intent to file the proposed rule change, along with a brief description and the text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission.

[39] 17 CFR 240.19b–4(f)(6).

[40] 17 CFR 240.19b–4(f)(6)(iii).

[41] *See* Securities Exchange Act Release No. 76382 (November 6, 2015), 80 FR 70284 (File No. 4–657) (Order Granting Exemption From Compliance With the National Market System Plan To Implement a Tick Size Pilot Program).

[42] For purposes only of waiving the 30-day operative delay, the Commission has also considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[43]

Robert W. Errett,
Deputy Secretary.

[FR Doc. 2016–07586 Filed 4–1–16; 8:45 am]

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[43] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–77469; File No. SR–CHX–2016–03]

Self-Regulatory Organizations; Chicago Stock Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Adopt Article 20, Rule 13 To Implement the Regulation NMS Plan To Implement a Tick Size Pilot Program ("Plan")

March 29, 2016.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 [2] thereunder, notice is hereby given that on March 28, 2016, the Chicago Stock Exchange, Inc. ("CHX" or the "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

CHX proposes to adopt Article 20, Rule 13 to implement the Regulation NMS Plan to Implement a Tick Size Pilot Program ("Plan"). Specifically, the Exchange proposes to adopt Article 20, Rule 13 to set forth the requirements for the collection and transmission of data pursuant to Appendices B and C of the Plan. The proposed rule change is substantially similar to proposed rule changes recently approved or published by the Commission by the Bats BZX Exchange, Inc. f/k/a BATS Exchange, Inc. ("BZX") to adopt BZX Rule 11.27(b) [3] and by the Financial Industry Regulatory Authority ("FINRA") to adopt FINRA Rule 6191(b),[4] both of which also sets forth requirements for the collection and transmission of data pursuant to Appendices B and C of the Plan. Therefore, the Exchange has designated this proposal as "non-controversial" and provided the Commission with the notice required by Rule 19b–4(f)(6)(iii) under the Act.[5]

The text of this proposed rule change is available on the Exchange's Web site at (*www.chx.com*) and in the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the CHX included statements concerning the purpose of and basis for the proposed rule changes and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The CHX has prepared summaries, set forth in sections A, B and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

On August 25, 2014, NYSE Group, Inc., on behalf of the Exchange, Bats BYX Exchange, Inc., BZX, Bats EDGA Exchange, Inc., Bats EDGX Exchange, Inc., FINRA, NASDAQ OMX BX, Inc., NASDAQ OMX PHLX LLC, the Nasdaq Stock Market LLC, New York Stock Exchange LLC ("NYSE"), NYSE MKT LLC, and NYSE Arca, Inc. (collectively "Plan Participants"), filed with the Commission, pursuant to Section 11A of the Act [6] and Rule 608 of Regulation NMS thereunder,[7] the Plan to Implement a Tick Size Pilot Program ("Pilot").[8] The Plan Participants filed the Plan to comply with an order issued by the Commission on June 24, 2014.[9] The Plan [10] was published for comment in the **Federal Register** on November 7, 2014, and approved by the Commission, as modified, on May 6, 2015.[11]

The Plan is designed to allow the Commission, market participants, and the public to study and assess the impact of increment conventions on the liquidity and trading of the common stocks of small-capitalization companies. Each Plan Participant is required to comply, and to enforce compliance by its members, as applicable, with the provisions of the Plan. As is described more fully below, the proposed rules would require CHX Participants [12] to comply with the applicable data collection requirements of the Plan.[13]

The Pilot will include stocks of companies with $3 billion or less in market capitalization, an average daily trading volume of one million shares or less, and a volume weighted average price of at least $2.00 for every trading day. The Pilot will consist of a control group of approximately 1400 Pilot Securities and three test groups with 400 Pilot Securities in each (selected by a stratified random sampling process).[14] During the pilot, Pilot Securities in the control group will be quoted at the current tick size increment of $0.01 per share and will trade at the currently permitted increments. Pilot Securities in the first test group ("Test Group One") will be quoted in $0.05 minimum increments but will continue to trade at any price increment that is currently permitted.[15] Pilot Securities in the second test group ("Test Group Two") will be quoted in $0.05 minimum increments and will trade at $0.05 minimum increments subject to a midpoint exception, a retail investor order exception, and a negotiated trade exception.[16] Pilot Securities in the third test group ("Test Group Three") will be subject to the same quoting and trading increments as Test Group Two and also will be subject to the "Trade-at" requirement to prevent price matching by a market Plan Participant that is not displaying at a Trading Center's "Best Protected Bid" or "Best Protected Offer," unless an enumerated exception applies.[17] In addition to the exceptions provided under Test Group Two, an exception for Block Size orders and exceptions that mirror those under Rule 611 of Regulation NMS [18] will apply to the Trade-at requirement.

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[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release Nos. 77105 (February 10, 2016), 81 FR 8112 (February 17, 2016) (order approving SR–BATS–2015–102); and 77310 (March 7, 2016) (notice for comment and immediate effectiveness of SR–BATS–2016–27).

[4] *See* Securities Exchange Act Release No. 77164 (February 17, 2016), 81 FR 9043 (February 23, 2016) (order approving SR–FINRA–2015–048).

[5] 17 CFR 240.19b–4(f)(6)(iii).

[6] 15 U.S.C. 78k–1.

[7] 17 CFR 242.608.

[8] *See* Letter from Brendon J. Weiss, Vice President, Intercontinental Exchange, Inc., to Secretary, Commission, dated August 25, 2014.

[9] *See* Securities Exchange Act Release No. 72460 (June 24, 2014), 79 FR 36840 (June 30, 2014).

[10] Unless otherwise specified, capitalized terms used in this rule filing are based on the defined terms of the Plan.

[11] *See* Securities Exchange Act Release No. 74892 (May 6, 2015), 80 FR 27513 (May 13, 2015) ("Approval Order").

[12] A "Participant" is a "member" of the Exchange for purposes of the Act. *See* CHX Article 1, Rule 1(s). For clarity, the Exchange proposes to utilize the term "CHX Participant" when referring to members of the Exchange and the term "Plan Participant" when referring to Participants of the Plan.

[13] The Exchange proposes Interpretations and Policies .11 to proposed Article 20, Rule 13 to provide that the Rule shall be in effect during a pilot period to coincide with the pilot period for the Plan (including any extensions to the pilot period for the Plan).

[14] *See* Section V of the Plan for identification of Pilot Securities, including criteria for selection and grouping.

[15] *See* Section VI(B) of the Plan.

In approving the Plan, the Commission noted that the Trading Center data reporting requirements would facilitate an analysis of the effects of the Pilot on liquidity (*e.g.,* transaction costs by order size), execution quality (*e.g.,* speed of order executions), market maker activity, competition between trading venues (*e.g.,* routing frequency of market orders), transparency (*e.g.,* choice between displayed and hidden orders), and market dynamics (*e.g.,* rates and speed of order cancellations).[19] The Commission noted that Market Maker profitability data would assist the Commission in evaluating the effect, if any, of a widened tick increment on market marker profits and any corresponding changes in the liquidity of small-capitalization securities.[20]

Compliance With the Data Collection Requirements of the Plan

The Plan contains requirements for collecting and transmitting data to the Commission and to the public.[21] Specifically, Appendix B.I of the Plan (Market Quality Statistics) requires Trading Centers [22] to submit a variety of market quality statistics, including information about an order's original size, whether the order was displayable or not, the cumulative number of orders, the cumulative number of shares of orders, and the cumulative number of shares executed within specific time increments, *e.g.,* from 30 seconds to less than 60 seconds after the time of order receipt. This information shall be categorized by security, order type, original order size, hidden status, and coverage under Rule 605.[23] Appendix B.I of the Plan also contains additional requirements for market orders and marketable limit orders, including the share-weighted average effective spread for executions of orders; the cumulative number of shares of orders executed with price improvement; and, for shares executed with price improvement, the share-weighted average amount per share that prices were improved.

Appendix B.II of the Plan (Market and Marketable Limit Order Data) requires Trading Centers to submit information relating to market orders and marketable limit orders, including the time of order receipt, order type, the order size, the National Best Bid and National Best Offer ("NBBO") quoted price, the NBBO quoted depth, the average execution price-share-weighted average, and the average execution time-share-weighted average.

The Plan requires Appendix B.I and B.II data to be submitted by Plan Participants that operate a Trading Center, and by members of the Plan Participants that operate Trading Centers. The Plan provides that each Plan Participant that is the Designated Examining Authority ("DEA") for a member of the Plan Participant that operates a Trading Center shall collect such data in a pipe delimited format, beginning six months prior to the Pilot Period and ending six months after the end of the Pilot Period. The Plan also requires the Plan Participant, operating as DEA, to transmit this information to the SEC within 30 calendar days following month end.

The Exchange is therefore proposing Article 20, Rule 13(b) to set forth the requirements for the collection and transmission of data pursuant to Appendices B and C of the Plan. Proposed Article 20, Rule 13(b) is substantially similar to proposed rule changes by BZX that were recently approved or published by the Commission to adopt BZX Rule 11.27(b) which also sets forth requirements for the collection and transmission of data pursuant to Appendices B and C of the Plan;[24] provided the following:

- Proposed Article 20, Rule 13(b)(2)(A) is similar to proposed rule changes by FINRA that were recently approved or published by the Commission to adopt FINRA Rule 6191(b)(2).[25]
- Proposed Article 20, Rule 13(b)(3)(B) is similar to approved BZX Rule 11.27(b)(3)(B), except that the Exchange is also proposing to require CHX Participant Market Makers for which the Exchange is the DEA to transmit Appendix B.IV data to FINRA directly, as discussed below.[26]
- Proposed Article 20, Rule 13(b)(4)(B) is similar to approved BZX Rule 11.27(b)(4)(B), except that the Exchange is also proposing to require CHX Participant Market Makers for which the Exchange is the DEA to transmit Appendix C.I data to FINRA directly, as discussed below.[27]

Appendices B.I and B.II

Proposed Article 20, Rule 13(b)(1) requires that a CHX Participant that operates a Trading Center shall establish, maintain and enforce written policies and procedures that are reasonably designed to comply with the data collection and transmission requirements of Items I and II to Appendix B of the Plan, and a CHX Participant that is a Market Maker shall establish, maintain and enforce written policies and procedures that are reasonably designed to comply with the data collection and transmission requirements of Item IV of Appendix B of the Plan and Item I of Appendix C of the Plan.

The Exchange notes that the data requirements of Items I and II to Appendix B of the Plan necessitates that the Exchange adopt two sets of rules: One for CHX Participants that operate Trading Centers subject to the Plan for which the Exchange is the DEA (*i.e.,* proposed Article 20, Rule 13(b)(2)(A)) and another for the Trading Center operated by the Exchange (*i.e.,* proposed Article 20, Rule 13(b)(2)(B)), as discussed below.

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[16] *See* Section VI(C) of the Plan.

[17] *See* Section VI(D) of the Plan.

[18] 17 CFR 242.611.

[19] *See* Approval Order, 80 FR at 27543.

[20] *Id.*

[21] The Exchange is also required by the Plan to establish, maintain, and enforce written policies and procedures that are reasonably designed to comply with applicable quoting and trading requirements specified in the Plan. The Exchange intends to separately propose rules that would require compliance by its CHX Participants with the applicable quoting and trading requirements specified in the Plan, and has reserved paragraph (a) of proposed Article 20, Rule 13 for such rules.

[22] The Plan incorporates the definition of a "Trading Center" from Rule 600(b)(78) of Regulation NMS. Regulation NMS defines a "Trading Center" as "a national securities exchange or national securities association that operates an SRO trading facility, an alternative trading system, an exchange market maker, an OTC market maker, or any other broker or dealer that executes orders internally by trading as principal or crossing orders as agent." *See* 17 CFR 242.600(b).

[23] 17 CFR 242.605.

[24] *See supra* note 3.

[25] Prior to the operative date of the proposed rule change, the Exchange will enter into a Tick Size Pilot Program Regulatory Services Agreement with FINRA ("TSPP RSA"), pursuant to which FINRA will consume and process certain data elements required under Appendices B.I, B.II, B.IV and C.I of the Plan that would either be submitted to FINRA by the Exchange (for Appendices B.I and B.II data) or by CHX Participants directly (for Appendices B.IV and C.I data). In turn, FINRA would provide the Exchange with processed data in a form as required for submission to the SEC under the Plan. At all times, the Exchange will maintain its data reporting obligations pursuant to the Plan.

[26] *See id.*

[27] *See id.*

Certain CHX Participant Trading Centers

Similar to FINRA Rule 6191(b)(2)(A)(i), proposed Article 20, Rule 13(b)(2)(A)(i) requires that a CHX Participant that operates a Trading Center subject to the Plan, and for which CHX is the DEA, shall collect and transmit to the Exchange the data described in Items I and II of Appendix B of the Plan with respect to each Pre-Pilot Data Collection Security for the period beginning six months prior to the Pilot Period through the trading day immediately preceding the Pilot Period; and each Pilot Security for the period beginning on the first day of the Pilot Period through six months after the end of the Pilot Period.[28]

Section IV of the Plan (Policies and Procedures) provides that each Plan Participant that is the DEA of a member of a Plan Participant operating a Trading Center is required to develop appropriate policies and procedures for collecting and reporting the data described in Items I and II of Appendix B, as applicable, to the DEA Plan Participant. The Exchange has determined that all of the data required by Appendix B.I and B.II to the Plan currently is reported to the Exchange pursuant to CHX Article 11, Rule 3, which requires CHX Participants for which the Exchange is the DEA, among others, to record certain order and execution information into an electronic system designated by the Exchange. In the interest of increasing the efficiency of the data collection process and the consistency of that data to be collected under the Plan, the Exchange proposes to use Article 11, Rule 3 as the vehicle through which Trading Centers must comply with their reporting obligations pursuant to Appendix B.I and B.II of the Plan.

Accordingly, similar to FINRA Rule 6191(b)(2)(A)(ii), proposed Article 20, Rule 13(b)(2)(A)(ii) provides that each CHX Participant that operates a Trading Center subject to the Plan, and for which CHX is the DEA, shall meet the data collection and reporting requirements in Items I and II of Appendix B through their submission of data elements required pursuant to Article 11, Rule 3, as well as the following additional data elements, when an order in a Pilot Security or Pre-Pilot Data Collection Security is received or originated: (a) Whether the CHX Participant is a Trading Center in either the Pilot Security or the Pre-Pilot Data Collection Security; and (b) whether the order is routable.

Moreover, similar to FINRA Rule 6191(b)(2)(A)(iii), proposed CHX Article 20, Rule 13(b)(2)(A)(iii) provides that when an order in a Pilot Security or Pre-Pilot Data Collection Security is executed, each CHX Participant subject to this paragraph (b)(2)(A) shall comply with its collection and transmission obligations under Items I and II of Appendix B to the Plan and this Rule by identifying whether CHX Participant is relying upon the Retail Investor Order exception with respect to the execution of the order.

As an initial matter, only those CHX Participants that operate a Trading Center and for which the Exchange is the DEA are required to make any changes to their Article 11, Rule 3 data recording. CHX Participants that do not operate Trading Centers or that have another self-regulatory organization as DEA will be permitted to leave the new fields blank. CHX Participants that operate Trading Centers and which the Exchange is the DEA will be required to indicate their status as a Trading Center for new orders involving Pre-Pilot Data Collection Securities and Pilot Securities.[29]

Moreover, the proposed rule change adds a new requirement to capture whether an order in a Pre-Pilot Data Collection Security or a Pilot Security received by a CHX Participant that operates a Trading Center and for which the Exchange is the DEA is routable[30] and whether the CHX Participant is relying on the Retail Investor Order exception in the Plan with respect to the execution of the order. These additional fields are necessary so that the Exchange can capture the information required by Item II(n) and II(o) of Appendix B to the Plan.

Similar to FINRA Rule 6191(b)(2)(A)(iv), proposed Article 20, Rule 13(b)(2)(A)(iv) provides that each CHX Participant that operates a Trading Center subject to the Tick Size Pilot Program, and for which the Exchange is the DEA, shall submit data required under this paragraph (b)(2)(A) by 8:00 a.m. CST the calendar day following the reportable event.

As set forth in Section VII of the Plan (Collection of Pilot Data) and similar to FINRA Rule 6191(b)(2)(B), proposed Article 20, Rule 13(b)(2)(A)(v) provides that the Exchange shall collect and transmit to the SEC the data described in Items I and II of Appendix B of the Plan and collected pursuant to this paragraph (b)(2)(A).[31] The Exchange shall transmit such data to the SEC in a pipe delimited format, on a disaggregated basis by Trading Center, within 30 calendar days following month end. Also, the Exchange shall make such data publicly available on the CHX Web site on a monthly basis at no charge and shall not identify the Trading Center that generated the data.

CHX Trading Center

Proposed Article 20, Rule 13(b)(2)(B)(i) provides that the Exchange shall collect and transmit to the SEC the data described in Items I and II of Appendix B of the Plan relating to trading activity in Pre-Pilot Securities and Pilot Securities on a Trading Center operated by the Exchange. The Exchange shall transmit such data to the SEC in a pipe delimited format, on a disaggregated basis by Trading Center, within 30 calendar days following month end for: (i) Each Pre-Pilot Data Collection Security for the period beginning six months prior to the Pilot Period through the trading day immediately preceding the Pilot Period; and (ii) each Pilot Security for the period beginning on the first day of the Pilot Period through six months after the end of the Pilot Period. The Exchange also shall make such data publicly available on the Exchange Web site on a monthly basis at no charge and will not identify the CHX Participant that generated the data.

Appendix B.IV

Appendix B.IV (Daily Market Maker Participation Statistics) requires a Plan Participant to collect data related to Market Maker participation from each Market Maker[32] engaging in trading activity on a Trading Center operated by the Plan Participant. The Exchange is therefore proposing Article 20, Rule 13(b)(3) to gather data about a Market Maker's participation in Pilot Securities and Pre-Pilot Data Collection Securities. Proposed Article 20, Rule 13(b)(3)(A) provides that a CHX Participant that is a Market Maker shall collect and transmit to their DEA data relating to Item IV of Appendix B of the Plan with respect to activity conducted on any Trading Center in Pilot Securities and Pre-Pilot Data Collection Securities in furtherance of its status as a registered Market Maker, including a Trading Center that executes trades otherwise than on a national securities exchange, for transactions that have settled or reached settlement date. The proposed rule requires Market Makers to transmit such data in a format required by their DEA, by 12:00 p.m. EST on T+4 for: (i) Transactions in each Pre-Pilot Data Collection Security for the period beginning six months prior to the Pilot Period through the trading day immediately preceding the Pilot Period; and (ii) for transactions in each Pilot Security for the period beginning on the first day of the Pilot Period through six months after the end of the Pilot Period.

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[28] As of the date of this filing, the Exchange has three CHX Participants that would be subject to the requirements of proposed paragraph (b)(2)(A). All three of these firms are also members of FINRA.

[29] The Exchange notes that CHX Participants are already required to record the display size of an order, pursuant to the CHX Article 11, Rule 3(c)(5) and (16), and thus, the Exchange already captures information required by Appendix B regarding hidden and displayed size.

[30] The Exchange notes that it currently requires CHX Participants for which the Exchange is the DEA to record whether an order received by the CHX Participant is routable, pursuant to CHX Article 11, Rule 3(c)(27), which provides that the Exchange may require CHX Participants to record "such other information as the Exchange may from time to time require."

[31] *See supra* note 25.

[32] The Plan defines a Market Maker as "a dealer registered with any self-regulatory organization, in accordance with the rules thereof, as (i) a market maker or (ii) a liquidity provider with an obligation to maintain continuous, two-sided trading interest."

However, the Exchange understands that some CHX Participants may utilize a DEA that is not a Plan Participant to the Plan and that their DEA would not be subject to the Plan's data collection requirements. In such case, a DEA that is not a Plan Participant of the Plan would not be required to collect the required data and may not establish procedures for CHX Participants for which it acts as DEA to report the data required under subparagraphs (b)(3)(A) of proposed Article 20, Rule 13(b)(3)(A) and in accordance with Item IV of Appendix B of the Plan.

Moreover, to facilitate the linking of relevant transactions across various Trading Centers by a CHX Participant Market Maker, the Exchange proposes to require CHX Participants Market Makers for which the Exchange is the DEA to submit data relating to Item IV of Appendix B to FINRA directly.[33]

Therefore, the Exchange proposes to adopt subparagraph (b)(3)(B) to proposed Article 20, Rule 13 to require a CHX Participant that is a Market Maker whose DEA (i) is not a Plan Participant to the Plan or (ii) is the Exchange to transmit the data collected pursuant to paragraph (3)(A) of proposed Article 20, Rule 13 to FINRA, which is a Plan Participant to the Plan and is to collect data relating to Item IV of Appendix B of the Plan on behalf of the Plan Participants. For Market Makers for which it is the DEA, FINRA issued a Market Maker Transaction Data Technical Specification to collect data on Pre-Pilot Data Collection Securities and Pilot Securities from Trading Centers to comply with the Plan's data collection requirements.[34]

Proposed Article 20, Rule 13(b)(3)(C) provides that the Exchange shall transmit the data collected by the DEA or FINRA pursuant to proposed Article 20, Rule 13(b)(3)(A) and (B) above relating to Market Maker activity on a Trading Center operated by the Exchange to the SEC in a pipe delimited format within 30 calendar days following month end. The Exchange shall also make such data publicly available on the Exchange Web site on a monthly basis at no charge and shall not identify the Trading Center that generated the data.

Appendix C.I

Appendix C.I (Market Maker Profitability) requires a Plan Participant to collect data related to Market Maker profitability from each Market Maker for which it is the DEA. Specifically, the Plan Participant is required to collect the total number of shares of orders executed by the Market Maker; the raw Market Maker realized trading profits, and the raw Market Maker unrealized trading profits. Data shall be collected for dates starting six months prior to the Pilot Period through six months after the end of the Pilot Period. This data shall be collected on a monthly basis, to be provided in a pipe delimited format to the Plan Participant, as DEA, within 30 calendar days following month end. Appendix C.II (Aggregated Market Maker Profitability) requires the Plan Participant, as DEA, to aggregate the Appendix C.I data, and to categorize this data by security as well as by the control group and each Test Group. That aggregated data shall contain information relating to total raw Market Maker realized trading profits, volume-weighted average of raw Market Maker realized trading profits, the total raw Market Maker unrealized trading profits, and the volume-weighted average of Market Maker unrealized trading profits.

The Exchange is therefore proposing Article 20, Rule 13(b)(4) to set forth the requirements for the collection and transmission of data pursuant to Appendix C.I of the Plan. Proposed Article 20, Rule 13(b)(4)(A) requires that a CHX Participant that is a Market Maker shall collect and transmit to their DEA the data described in Item I of Appendix C of the Plan with respect to executions in Pilot Securities that have settled or reached settlement date that were executed on any Trading Center. The proposed rule also requires CHX Participants to provide such data in a format required by their DEA by 12 p.m. EST on T+4 for executions during and outside of Regular Trading Hours in each: (i) Pre-Pilot Data Collection Security for the period beginning six months prior to the Pilot Period through the trading day immediately preceding the Pilot Period; and (ii) Pilot Security for the period beginning on the first day of the Pilot Period through six months after the end of the Pilot Period.

For the same reasons set forth above for subparagraph (b)(3)(B) to proposed Article 20, Rule 13, the Exchange proposes to adopt subparagraph (b)(4)(B) to proposed Article 20, Rule 13 to require a CHX Participant that is a Market Maker whose DEA (i) is not a Plan Participant to the Plan or (ii) the Exchange to transmit the data collected pursuant to paragraph (4)(A) of Article 20, Rule 13 to FINRA directly. As stated above, FINRA is a Plan Participant to the Plan and is to collect data relating to Item I of Appendix C of the Plan on behalf of the Plan Participants. For Market Makers for which it is the DEA, FINRA issued a Market Maker Transaction Data Technical Specification to collect data on Pre-Pilot Data Collection Securities and Pilot Securities from Trading Centers to comply with the Plan's data collection requirements.[35]

Appendix B.III

The Exchange is also adopting a rule setting forth the manner in which Market Maker participation will be calculated. Item III of Appendix B of the Plan requires each Plan Participant that is a national securities exchange to collect daily Market Maker registration statistics categorized by security, including the following information: (i) Ticker symbol; (ii) the Plan Participant exchange; (iii) number of registered market makers; and (iv) the number of other registered liquidity providers. Therefore, the Exchange proposes to adopt proposed Article 20, Rule 13(b)(5) providing that the Exchange shall collect and transmit to the SEC the data described in Item III of Appendix B of the Plan relating to daily Market Maker registration statistics in a pipe delimited format within 30 calendar days following month end for: (i) Transactions in each Pre-Pilot Data Collection Security for the period beginning six months prior to the Pilot Period through the trading day immediately preceding the Pilot Period;

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[33] *See supra* note 25.

[34] CHX Participant Market Makers that would be obligated to submit data relating to Item IV of Appendix B to FINRA directly should refer to the Market Maker Transaction Data Technical Specification on the FINRA Web site at *http://www.finra.org/sites/default/files/market-maker-transaction-data-tech-specs.pdf.*

[35] *Id.*

and (ii) transactions in each Pilot Security for the period beginning on the first day of the Pilot Period through six months after the end of the Pilot Period.

The Exchange is also proposing, through Interpretations and Policies, to clarify other aspects of the data collection requirements.[36] Proposed Interpretations and Policies .02 relates to the use of the retail investor order flag for purposes of Appendix B.II(n) reporting. The Plan currently states that market and marketable limit orders shall include a "yes/no" field relating to the Retail Investor Order flag. The Exchange is proposing Interpretations and Policies .02 to clarify that, for purposes of the reporting requirement in Appendix B.II(n), a Trading Center shall report "y" to their DEA where it is relying upon the Retail Investor Order exception to Test Groups Two and Three, and "n" for all other instances.[37] The Exchange believes that requiring the identification of a Retail Investor Orders only where the exception may apply (*i.e.,* Pilot Securities in Test Groups Two and Three) is consistent with Appendix B.II(n).

Interpretations and Policies .03 requires that CHX Participants populate a field to identify to their DEA whether an order is affected by the bands in place pursuant to the National Market System Plan to Address Extraordinary Market Volatility.[38] Pursuant to the Limit-Up Limit-Down Plan, between 9:30 a.m. and 4:00 p.m., the Securities Information Processor ("SIP") calculates a lower price band and an upper price band for each NMS stock. These price bands represent a specified percentage above or below the stock's reference price, which generally is calculated based on reported transactions in that stock over the preceding five minutes. When one side of the market for an individual security is outside the applicable price band, the SIP identifies that quotation as non-executable. When the other side of the market reaches the applicable price band (*e.g.,* the offer reaches the lower price band), the security enters a Limit State. The stock would exit a Limit State if, within 15 seconds of entering the Limit State, all Limit State Quotations were executed or canceled in their entirety. If the security does not exit a Limit State within 15 seconds, then the primary listing exchange declares a five-minute trading pause, which would be applicable to all markets trading the security.

The Exchange and the other Plan Participants have determined that it is appropriate to create a new flag for reporting orders that are affected by the Limit-Up Limit-Down bands. Accordingly, a Trading Center shall report a value of "Y" to their DEA when the ability of an order to execute has been affected by the Limit-Up Limit-Down bands in effect at the time of order receipt. A Trading Center shall report a value of "N" to their DEA when the ability of an order to execute has not been affected by the Limit-Up Limit-Down bands in effect at the time of order receipt.

Interpretations and Policies .03 also requires, for securities that may trade in a foreign market, that the Plan Participant indicate whether the order was handled domestically, or routed to a foreign venue. Accordingly, the Plan Participant will indicate, for purposes of Appendix B.I, whether the order was: (1) Fully executed domestically, or (2) fully or partially executed on a foreign market. For purposes of Appendix B.II, the Plan Participant will classify all orders in securities that may trade in a foreign market Pilot and Pre-Pilot Securities as: (1) Directed to a domestic venue for execution; (2) may only be directed to a foreign venue for execution; or (3) was fully or partially directed to a foreign venue at the discretion of the CHX Participant. The Exchange believes that this proposed flag will better identify orders in securities that may trade in a foreign market, as such orders that were routed to foreign venues would not be subject to the Plan's quoting and trading requirements, and could otherwise compromise the integrity of the data.

Interpretations and Policies .04 relates to the time ranges specified in Appendix B.I.a(14), B.I.a(15), B.I.a(21) and B.I.a(22).[39] The Exchange and the other Plan Participants have determined that it is appropriate to change the reporting times in these provisions to require more granular reporting for these categories. Accordingly, the Exchange proposes to add Appendix B.I.a(14A), which will require Trading Centers to report the cumulative number of shares of orders executed from 100 microseconds to less than 1 millisecond after the time of order receipt. Appendix B.I.a(15) will be changed to require the cumulative number of shares of orders executed from 1 millisecond to less than 100 milliseconds after the time of order receipt. The Exchange also proposes to add Appendix B.I.a(21A), which will require Trading Centers to report the cumulative number of shares of orders canceled from 100 microseconds to less than 1 millisecond after the time of order receipt. Appendix B.I.a(22) will be changed to require the cumulative number of shares of orders canceled from 1 millisecond to less than 100 milliseconds after the time of order receipt. The Exchange believes that these new reporting requirements will contribute to a meaningful analysis of the Pilot by producing more granular data on these points.[40]

Interpretations and Policies .05 relates to the relevant measurement for purposes of Appendix B.I.a(31)–(33) reporting. Currently, the Plan states that this data shall be reported as of the time of order execution. The Exchange and the other Plan Participants believe that this information should more properly be captured at the time of order receipt as evaluating share-weighted average prices at the time of order receipt is more consistent with the goal of observing the effect of the Pilot on the liquidity of Pilot Securities. The Exchange is therefore proposing to make this change through Interpretations and Policies .05.[41] This change will make these provisions consistent with the remainder of the statistics in Appendix B.I.a, which are all based on order receipt.

Interpretations and Policies .06 addresses the status of not-held and auction orders for purposes of Appendix

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[36] The Exchange is also proposing Interpretations and Policies .01 to Article 20, Rule 13 to clarify that certain enumerated terms used throughout Article 20, Rule 13 shall have the same meaning as set forth in the Plan.

[37] FINRA, on behalf of the Plan Participants submitted a letter to Commission requesting exemption from certain provisions of the Plan related to data collection. *See* letter from Marcia E. Asquith, Senior Vice President and Corporate Secretary, FINRA dated December 9, 2015 to Robert W. Errett, Deputy Secretary, Commission ("Exemption Request"). The Commission, pursuant to its authority under Rule 608(e) of Regulation NMS, granted BZX a limited exemption from the requirement to comply with certain provisions of the Plan as specified in the letter and noted herein. *See* letter from David Shillman, Associate Director, Division of Trading and Markets, Commission to Eric Swanson, General Counsel, BZX, dated February 10, 2016 ("Exemption Letter").

[38] *See* National Market System Plan to Address Extraordinary Market Volatility, Securities Exchange Act Release No. 67091 (May 31, 2012), 77 FR 33498 (June 6, 2012) (File No. 4–631) ("Limit-Up Limit-Down Plan").

[39] Specifically, Appendix B.I.a(14) requires reporting of the cumulative number of shares of orders executed from 0 to less than 100 microseconds after the time of order receipt; Appendix B.I.a(15) requires reporting of the cumulative number of shares of orders executed from 100 microseconds to less than 100 milliseconds after the time of order receipt; Appendix B.I.a(21) requires reporting of the cumulative number of shares of orders cancelled from 0 to less than 100 microseconds after the time of order receipt; and Appendix B.I.a(22) requires reporting of the cumulative number of shares of orders cancelled from 100 microseconds to less than 100 milliseconds after the time of order receipt.

[40] The Commission granted BZX an exemption from Rule 608(c) related to this provision. *See* Exemption Letter, *supra* note 37.

[41] *Id.*

B.I reporting. Currently, Appendix B.I sets forth eight categories of orders, including market orders, marketable limit orders, and inside-the-quote resting limit orders, for which daily market quality statistics must be reported. Currently, Appendix B.I does not provide a category for not held orders, clean cross orders, auction orders, or orders received when the NBBO is crossed. The Exchange and the other Plan Participants have determined that it is appropriate to include separate categories for these orders types for purposes of Appendix B reporting. The Exchange is therefore proposing Interpretations and Policies .06 to provide that not held orders shall be included as an order type for purposes of Appendix B reporting, and shall be assigned the number (18). Clean cross orders shall be included as an order type for purposes of Appendix B reporting, and shall be assigned the number (19); auction orders shall be included an as order type for purposes of Appendix B reporting, and shall be assigned the number (20); and orders that cannot otherwise be classified, including, for example, orders received when the NBBO is crossed shall be included as an order type for purposes of Appendix B reporting, and shall be assigned the number (21). All of these orders already are included in the scope of Appendix B; however, without this proposed change, these order types would be categorized with other orders, such as regular held orders, that should be able to be fully executed upon receipt, which would compromise the value of this data.

The Exchange is proposing Interpretations and Policies .07 to clarify the scope of the Plan as it relates to CHX Participants that only execute orders limited purposes. Specifically, the Exchange and the other Plan Participants believe that a CHX Participant that only executes orders otherwise than on a national securities exchange for the purpose of: (1) Correcting a bona fide error related to the execution of a customer order; (2) purchasing a security from a customer at a nominal price solely for purposes of liquidating the customer's position; or (3) completing the fractional share portion of an order[42] shall not be deemed a Trading Center for purposes of Appendix B to the Plan. The Exchange is therefore proposing Supplementary Material .09 to make this clarification.

The Exchange is proposing Interpretations and Policies .08 to clarify that, for purposes of the Plan, Trading Centers must begin the data collection required pursuant to Appendix B.I.a(1) through B.II.(y) of the Plan and Item I of Appendix C of the Plan on April 4, 2016. While the Exchange or the CHX Participant's DEA will provide the information required by Appendix B and C of the Plan during the Pilot Period, the requirement that the Exchange or their DEA provide information to the SEC within 30 days following month end and make such data publicly available on its Web site pursuant to Appendix B and C shall commence six months prior to the beginning of the Pilot Period.[43]

The Exchange is proposing Interpretations and Policies .09 to address the requirement in Appendix C.I(b) of the Plan that the calculation of raw Market Maker realized trading profits utilize a last in, first out ("LIFO")-like method to determine which share prices shall be used in that calculation. The Exchange and the other Plan Participants believe that it is more appropriate to utilize a methodology that yields LIFO-like results, rather than utilizing a LIFO-like method, and the Exchange is therefore proposing Interpretations and Policies .09 to make this change.[44] The Exchange is proposing that, for purposes of Item I of Appendix C, the Plan Participants shall calculate daily Market Maker realized profitability statistics for each trading day on a daily LIFO basis using reported trade price and shall include only trades executed on the subject trading day. The daily LIFO calculation shall not include any positions carried over from previous trading days. For purposes of Item I.c of Appendix C, the Plan Participants shall calculate daily Market Maker unrealized profitability statistics for each trading day on an average price basis. Specifically, the Plan Participants must calculate the volume weighted average price of the excess (deficit) of buy volume over sell volume for the current trading day using reported trade price. The gain (loss) of the excess (deficit) of buy volume over sell volume shall be determined by using the volume weighted average price compared to the closing price of the security as reported by the primary listing exchange. In reporting unrealized trading profits, the Plan Participant shall also report the number of excess (deficit) shares held by the Market Maker, the volume weighted average price of that excess (deficit) and the closing price of the security as reported by the primary listing exchange used in reporting unrealized profit.[45]

Finally, the Exchange is proposing Interpretations and Policies .10 to address the securities that will be used for data collection purposes prior to the commencement of the Pilot. The Exchange and the other Plan Participants have determined that it is appropriate to collect data for a group of securities that is larger, and using different quantitative thresholds, than the group of securities that will be Pilot Securities. The Exchange is therefore proposing Interpretations and Policies .10 to define "Pre-Pilot Data Collection Securities" as the securities designated by the Plan Participants for purposes of the data collection requirements described in Items I, II and IV of Appendix B and Item I of Appendix C of the Plan for the period beginning six months prior to the Pilot Period and ending on the trading day immediately preceding the Pilot Period. The Plan Participants shall compile the list of Pre-Pilot Data Collection Securities by selecting all NMS stocks with a market capitalization of $5 billion or less, a Consolidated Average Daily Volume (CADV) of 2 million shares or less and a closing price of $1 per share or more. The market capitalization and the closing price thresholds shall be applied to the last day of the Pre-Pilot measurement period, and the CADV threshold shall be applied to the duration of the Pre-Pilot measurement period. The Pre-Pilot measurement period shall be the three calendar months ending on the day when the Pre-Pilot Data Collection Securities are selected. The Pre-Pilot Data Collection Securities shall be selected thirty days prior to the commencement of the six-month Pre-Pilot Period. On the trading day that is the first trading day of the Pilot Period through six months after the end of the Pilot Period, the data collection requirements will become applicable to the Pilot Securities only. A Pilot Security will only be eligible to be included in a Test Group if it was a Pre-Pilot Security.

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[42] The Exchange notes that where a CHX Participant purchases a fractional share from a customer, the Trading Center that executes the remaining whole shares of that customer order would subject to subject to Appendix B of the Plan.

[43] In its order approving the Plan, the SEC noted that the Pilot shall be implemented within one year of the date of publication of its order, *e.g.*, by May 6, 2016. *See* Approval Order, 80 FR at 27545. However, on November 6, 2015, the SEC extended the implementation date approximately five months to October 3, 2016. *See* Securities Exchange Act Release No. 76382 (November 6, 2015), 80 FR 70284 (File No. 4–657) (Order Granting Exemption From Compliance With the National Market System Plan To Implement a Tick Size Pilot Program); *see also* Letter from Brendon J. Weiss, Co-Head, Government Affairs, Intercontinental Exchange/NYSE, to Brent J. Fields, Secretary, Commission, dated November 4, 2015 (requesting the data collection period be extended until six months after the requisite SRO rules are approved, and the implementation data of the Tick Size Pilot until six months thereafter).

[44] Appendix C.I currently requires Market Maker profitability statistics to include (1) the total number of shares of orders executed by the Market Maker; (2) raw Market Maker realized trading profits, which is the difference between the market value of Market Maker shares and the market value of Market Maker purchases, using a LIFO-like method; and (3) raw Market Maker unrealized trading profits, which is the difference between the purchase or sale price of the end-of-day inventory position of the Market Maker and the Closing Price. In the case of a short position, the Closing Price from the sale will be subtracted; in the case of a long position, the purchase price will be subtracted from the Closing Price.

[45] The Commission granted BZX an exemption from Rule 608(c) related to this provision. *See* Exemption Letter, *supra* note 37.

Implementation Date

The proposed rule change will be operative on April 4, 2016.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act[46] in general, and furthers the objectives of Section 6(b)(5) of the Act[47] in particular, in that it is designed to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest.

The Exchange believes that this proposal is consistent with the Act because it implements and clarifies the provisions of the Plan, and is designed to assist the Exchange in meeting its regulatory obligations pursuant of the Plan. In approving the Plan, the SEC noted that the Pilot was an appropriate, data-driven test that was designed to evaluate the impact of a wider tick size on trading, liquidity, and the market quality of securities of smaller capitalization companies, and was therefore in furtherance of the purposes of the Act. The Exchange believes that this proposal is in furtherance of the objectives of the Plan, as identified by the SEC, and is therefore consistent with the Act because the proposal implements and clarifies the requirements of the Plan and applies specific obligations to CHX Participants in furtherance of compliance with the Plan.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange notes that the proposed rule change implements the provisions of the Plan, and is designed to assist the Exchange in meeting its regulatory obligations pursuant of the Plan. The Exchange also notes that the data collection requirements for CHX Participants that operate Trading Centers will apply equally to all such CHX Participants, as will the data collection requirements for Market Makers.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the proposed rule change does not (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act[48] and Rule 19b–4(f)(6) thereunder.[49]

A proposed rule change filed pursuant to Rule 19b–4(f)(6) under the Act[50] normally does not become operative for 30 days after the date of its filing. However, Rule 19b–4(f)(6)(iii)[51] permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay. The Commission believes that waiver of the operative delay is consistent with the protection of investors and the public interest because it would allow the Exchange to implement the proposed amendments on April 4, 2016, the date upon which the data collection requirements of the Plan become effective.[52] Therefore, the Commission hereby waives the operative delay and designates the proposal operative on April 4, 2016.[53]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov*. Please include File Number SR–CHX–2016–03 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–CHX–2016–03. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–CHX–2016–03, and should be submitted on or before April 25, 2016.

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[46] 15 U.S.C. 78f(b).

[47] 15 U.S.C. 78f(b)(5).

[48] 15 U.S.C. 78s(b)(3)(A).

[49] 17 CFR 240.19b–4(f)(6). As required under Rule 19b–4(f)(6)(iii), the Exchange provided the Commission with written notice of its intent to file the proposed rule change, along with a brief description and the text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission.

[50] 17 CFR 240.19b–4(f)(6).

[51] 17 CFR 240.19b–4(f)(6)(iii).

[52] *See* Securities Exchange Act Release No. 76382 (November 6, 2015), 80 FR 70284 (File No. 4–657) (Order Granting Exemption From Compliance With the National Market System Plan To Implement a Tick Size Pilot Program).

[53] For purposes only of waiving the 30-day operative delay, the Commission has also considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[54]

Robert W. Errett,

Deputy Secretary.

[FR Doc. 2016–07515 Filed 4–1–16; 8:45 am]

BILLING CODE 8011–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration # 14667 and # 14668]

Louisiana Disaster Number LA–00062

AGENCY: U.S. Small Business Administration.

ACTION: Amendment 3.

SUMMARY: This is an amendment of the Presidential declaration of a major disaster for the State of Louisiana (FEMA–4263–DR), dated 03/13/2016.

Incident: Severe Storms and Flooding.

Incident Period: 03/08/2016 and continuing.

Effective Date: 03/25/2016.

Physical Loan Application Deadline Date: 05/12/2016.

EIDL Loan Application Deadline Date: 12/13/2016.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street SW., Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: The notice of the Presidential disaster declaration for the State of Louisiana, dated 03/13/2016 is hereby amended to include the following areas as adversely affected by the disaster:

Primary Parishes: (Physical Damage and Economic Injury Loans):
Jackson, Rapides, Red River, Sabine.
Contiguous Counties: (Economic Injury Loans Only):
Texas: Sabine.

All other information in the original declaration remains unchanged.

(Catalog of Federal Domestic Assistance Numbers 59008)

James E. Rivera,

Associate Administrator for Disaster Assistance.

[FR Doc. 2016–07651 Filed 4–1–16; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #14677 and #14678]

Pennsylvania Disaster #PA–00069

AGENCY: U.S. Small Business Administration.

ACTION: Notice.

SUMMARY: This is a Notice of the Presidential declaration of a major disaster for Public Assistance Only for the State of Pennsylvania (FEMA–4267–DR), dated 03/23/2016.

Incident: Severe Winter Storm and Snowstorm.

Incident Period: 01/22/2016 through 01/23/2016.

Effective Date: 03/23/2016.

Physical Loan Application Deadline Date: 05/23/2016.

Economic Injury (EIDL) Loan Application Deadline Date: 12/23/2016.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration Processing, and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street SW., Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: Notice is hereby given that as a result of the President's major disaster declaration on 03/23/2016, Private Non-Profit organizations that provide essential services of governmental nature may file disaster loan applications at the address listed above or other locally announced locations.

The following areas have been determined to be adversely affected by the disaster:

Primary Counties: Adams, Bedford, Berks, Blair, Bucks, Chester, Cumberland, Dauphin, Fayette, Franklin, Fulton, Juniata, Lancaster, Lebanon, Lehigh, Montgomery, Northampton, Perry, Philadelphia, Schuylkill, Somerset, Westmoreland, York.

The Interest Rates are:

	Percent
For Physical Damage:	
Non-Profit Organizations With Credit Available Elsewhere ...	2.625
Non-Profit Organizations Without Credit Available Elsewhere ...	2.625
For Economic Injury:	
Non-Profit Organizations Without Credit Available Elsewhere ...	2.625

The number assigned to this disaster for physical damage is 14677B and for economic injury is 14678B.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

James E. Rivera,

Associate Administrator for Disaster Assistance.

[FR Doc. 2016–07603 Filed 4–1–16; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration # 14656 and # 14657]

Georgia Disaster Number GA–00066

AGENCY: U.S. Small Business Administration.

ACTION: Amendment 1.

SUMMARY: This is an amendment of the Presidential declaration of a major disaster for Public Assistance Only for the State of Georgia (FEMA–4259–DR), dated 02/26/2016.

Incident: Severe Storms and Flooding.

Incident Period: 12/22/2015 through 01/13/2016.

Effective Date: 03/28/2016.

Physical Loan Application Deadline Date: 04/26/2016.

Economic Injury (EIDL) Loan Application Deadline Date: 11/28/2016.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street SW., Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: The notice of the President's major disaster declaration for Private Non-Profit organizations in the State of Georgia, dated 02/26/2016, is hereby amended to include the following areas as adversely affected by the disaster.

Primary Counties:
Union.

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[54] 17 CFR 200.30–3(a)(12).

All other information in the original declaration remains unchanged.

(Catalog of Federal Domestic Assistance Numbers 59008)

Lisa Lopez-Suarez,

Acting Associate Administrator for Disaster Assistance.

[FR Doc. 2016–07648 Filed 4–1–16; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #14675 and #14676]

Texas Disaster Number TX–00465

AGENCY: U.S. Small Business Administration.

ACTION: Amendment 1.

SUMMARY: This is an amendment of the Presidential declaration of a major disaster for the State of Texas (FEMA–4266–DR), dated 03/19/2016.

Incident: Severe storms, tornadoes, and flooding.

Incident Period: 03/07/2016 and continuing.

Effective Date: 03/25/2016.

Physical Loan Application Deadline Date: 05/18/2016.

EIDL Loan Application Deadline Date: 12/19/2016.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street, SW., Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: The notice of the Presidential disaster declaration for the State of TEXAS, dated 03/19/2016 is hereby amended to include the following areas as adversely affected by the disaster:

Primary Counties: (Physical Damage and Economic Injury Loans): Erath, Gregg, Harrison, Hood, Marion, Parker

Contiguous Counties: (Economic Injury Loans Only):

Texas : Bosque, Cass, Comanche, Eastland, Hamilton, Jack, Johnson, Morris, Palo Pinto, Panola, Rusk, Smith, Somervell, Tarrant Upshur, Wise

Louisiana: Caddo

All other information in the original declaration remains unchanged.

(Catalog of Federal Domestic Assistance Numbers 59008)

James E. Rivera,

Associate Administrator for Disaster Assistance.

[FR Doc. 2016–07605 Filed 4–1–16; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #14685 and #14686]

Mississippi Disaster #MS–00084

AGENCY: U.S. Small Business Administration.

ACTION: Notice.

SUMMARY: This is a Notice of the Presidential declaration of a major disaster for the State of Mississippi (FEMA–4268–DR), dated 03/25/2016.

Incident: Severe Storms and Flooding.

Incident Period: 03/09/2016 and continuing.

Effective Date: 03/25/2016.

Physical Loan Application Deadline Date: 05/24/2016.

Economic Injury (EIDL) Loan Application Deadline Date: 12/27/2016.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street SW., Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: Notice is hereby given that as a result of the President's major disaster declaration on 03/25/2016, applications for disaster loans may be filed at the address listed above or other locally announced locations.

The following areas have been determined to be adversely affected by the disaster:

Primary Counties (Physical Damage and Economic Injury Loans): Bolivar, Coahoma, Washington.

Contiguous Counties (Economic Injury Loans Only):

Mississippi: Humphreys, Issaquena, Quitman, Sharkey, Sunflower, Tallahatchie, Tunica.

Arkansas: Chicot, Desha, Phillips.

The Interest Rates are:

	Percent
For Physical Damage:	
Homeowners With Credit Available Elsewhere	3.625
Homeowners Without Credit Available Elsewhere	1.813
Businesses With Credit Available Elsewhere	6.250
Businesses Without Credit Available Elsewhere	4.000
Non-Profit Organizations With Credit Available Elsewhere	2.625
Non-Profit Organizations Without Credit Available Elsewhere	2.625
For Economic Injury:	
Businesses & Small Agricultural Cooperatives Without Credit Available Elsewhere	4.000
Non-Profit Organizations Without Credit Available Elsewhere	2.625

The number assigned to this disaster for physical damage is 146856 and for economic injury is 146860.

(Catalog of Federal Domestic Assistance Numbers 59008)

James E. Rivera,

Associate Administrator for Disaster Assistance.

[FR Doc. 2016–07604 Filed 4–1–16; 8:45 am]

BILLING CODE 8025–01–P

SOCIAL SECURITY ADMINISTRATION

[Docket No: SSA–2016–0010]

Agency Information Collection Activities: Proposed Request

The Social Security Administration (SSA) publishes a list of information collection packages requiring clearance by the Office of Management and Budget (OMB) in compliance with Public Law 104–13, the Paperwork Reduction Act of 1995, effective October 1, 1995. This notice includes revisions of OMB-approved information collections.

SSA is soliciting comments on the accuracy of the agency's burden estimate; the need for the information; its practical utility; ways to enhance its quality, utility, and clarity; and ways to minimize burden on respondents, including the use of automated collection techniques or other forms of information technology. Mail, email, or fax your comments and recommendations on the information collection(s) to the OMB Desk Officer and SSA Reports Clearance Officer at the following addresses or fax numbers.

(OMB), Office of Management and Budget, Attn: Desk Officer for SSA, Fax: 202–395–6974, Email address: *OIRA_Submission@omb.eop.gov.*

(SSA), Social Security Administration, OLCA, Attn: Reports Clearance Director, 3100 West High Rise, 6401 Security Blvd., Baltimore, MD 21235, Fax: 410–966–2830, Email address: *OR.Reports.Clearance@ssa.gov.*

Or you may submit your comments online through *www.regulations.gov,* referencing Docket ID Number [SSA–2016–0010].

The information collections below are pending at SSA. SSA will submit them to OMB within 60 days from the date of this notice. To be sure we consider your comments, we must receive them no later than June 3, 2016. Individuals can obtain copies of the collection instruments by writing to the above email address.

1. Application for Lump Sum Death Payment—20 CFR 404.390–404.392—0960–0013. SSA uses Form SSA–8–F4 to collect information needed to authorize payment of the lump sum death payment (LSDP) to a widow, widower, or children as defined in Section 202(i) of the Social Security Act (Act). Respondents complete the application for this one-time payment via paper form, telephone, or an in-person interview with SSA employees. Respondents are applicants for the LSDP.

Type of Request: Revision of an OMB-approved information collection.

Modality of completion	Number of respondents	Frequency of response	Average burden per response (minutes)	Estimated total annual burden (hours)
Modernized Claims System	662,084	1	9	99,313
Paper	8,164	1	10	1,361
Total	670,248			100,674

Medical Report on Adult with Allegation of Human Immunodeficiency Virus Infection; Medical Report on Child with Allegation of Human Immunodeficiency Virus Infection—20 CFR 416.933–20 CFR 416.934—0960–0500. Section 1631(e)(i) of the Act authorizes the Commissioner of SSA to gather information to make a determination about an applicant's claim for Supplemental Security Income (SSI) payments; this procedure is the Presumptive Disability (PD). SSA uses Forms SSA–4814–F5 and SSA–4815–F6 to collect information necessary to determine if an individual with human immunodeficiency virus infection, who is applying for SSI disability benefits, meets the requirements for PD. The respondents are the medical sources of the applicants for SSI disability payments.

Type of Request: Revision of an OMB-approved information collection.

Modality of completion	Number of respondents	Frequency of response	Average burden per response (minutes)	Total estimated total annual burden (hours)
SSA–4814–F5	18,750	1	8	2,500
SSA–4815–F6	120	1	10	20
Totals	18,870			2,520

3. Complaint Form for Allegations of Discrimination in Programs or Activities Conducted by the Social Security Administration—0960–0585. SSA uses Form SSA–437 to investigate and formally resolve complaints of discrimination based on disability, race, color, national origin (including limited English language proficiency), sex (including sexual orientation and gender identity), age, religion, or retaliation for having participated in a proceeding under this administrative complaint process in connection with an SSA program or activity. Individuals who believe SSA discriminated against them on any of the above bases may file a written complaint of discrimination. SSA uses the information to (1) identify the complaint; (2) identify the alleged discriminatory act; (3) establish the date of such alleged action; (4) establish the identity of any individual(s) with information about the alleged discrimination; and (5) establish other relevant information that would assist in the investigation and resolution of the complaint. Respondents are individuals who believe an SSA program or activity, or SSA employees, contractors or agents discriminated against them.

Type of Request: Revision on an OMB-approved information collection.

Modality of collection	Number of respondents	Frequency of response	Average burden per response (minutes)	Total annual burden (hours)
SSA–437	255	1	60	255

Dated: March 28, 2016.

Faye Lipsky,

Reports Clearance Director, Social Security Administration.

[FR Doc. 2016–07584 Filed 4–1–16; 8:45 am]

BILLING CODE 4191–02–P

DEPARTMENT OF STATE

[Public Notice: 9507]

Culturally Significant Objects Imported for Exhibition Determinations: "Court and Cosmos: The Great Age of the Seljuqs" Exhibition

SUMMARY: Notice is hereby given of the following determinations: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985; 22 U.S.C. 2459), E.O. 12047 of March 27, 1978, the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.;* 22 U.S.C. 6501 note, *et seq.*), Delegation of Authority No. 234 of October 1, 1999, Delegation of Authority No. 236–3 of August 28, 2000 (and, as appropriate, Delegation of Authority No. 257–1 of December 11, 2015), I hereby determine that the objects to be included in the exhibition "Court and Cosmos: The Great Age of the Seljuqs," imported from abroad for temporary exhibition within the United States, are of cultural significance. The objects are imported pursuant to loan agreements with the foreign owners or custodians. I also determine that the exhibition or display of the exhibit objects at The Metropolitan Museum of Art, New York, New York, from on or about April 27, 2016, until on or about July 24, 2016, and at possible additional exhibitions or venues yet to be determined, is in the national interest. I have ordered that Public Notice of these Determinations be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: For further information, including a list of the imported objects to which this notice pertains, contact the Office of Public Diplomacy and Public Affairs in the Office of the Legal Adviser, U.S. Department of State (telephone: 202–632–6471; email: *section2459@state.gov*). The mailing address is U.S. Department of State, L/PD, SA–5, Suite 5H03, Washington, DC 20522–0505.

Dated: March 29, 2016.

Mark Taplin,

Deputy Assistant Secretary for Policy, Bureau of Educational and Cultural Affairs, Department of State.

[FR Doc. 2016–07614 Filed 4–1–16; 8:45 am]

BILLING CODE 4710–05–P

DEPARTMENT OF STATE

[Public Notice: 9509]

Shipping Coordinating Committee; Amended Notice of Public Meeting

Notice is hereby given of a change in date and location of the Shipping Coordinating Committee (SHC) meeting announced in the **Federal Register** on March 17, 2016, 81 FR 14514. The meeting will be held at 9:00 a.m. on May 6, 2016, in the CDR Raymond J. Evans Conference Center, Room 6i10–01–b, of the Douglas A. Munro Coast Guard Headquarters Building at St. Elizabeth's, 2703 Martin Luther King Jr. Avenue SE., Washington, DC 20593. The primary purpose of the meeting is to prepare for the ninety sixth session of the International Maritime Organization's (IMO) Maritime Safety Committee to be held at the IMO Headquarters, United Kingdom, May 11–20, 2016. For the agenda and RSVP information, please refer to the previous **Federal Register** notice. Please note that requests to attend the meeting, and for reasonable accommodation, must be made not later than April 28, 2016. Requests made after April 28, 2016 might not be able to be accommodated.

Due to security considerations, two valid, government issued photo identifications must be presented to gain entrance to the Headquarters building. It is recommended that attendees arrive to the Headquarters building no later than 30 minutes ahead of the scheduled SHC meeting for the security screening process. The Headquarters building is accessible by taxi and public transportation. Parking in the vicinity of the building is extremely limited and not guaranteed. Additional information is at *www.uscg.mil/imo/.*

Dated: March 25, 2016.

Jonathan W. Burby,

Executive Secretary, Shipping Coordinating Committee, Department of State.

[FR Doc. 2016–07619 Filed 4–1–16; 8:45 am]

BILLING CODE 4710–09–P

DEPARTMENT OF STATE

[Public Notice: 9508]

60-Day Notice of Proposed Information Collection: Application for a U.S. Passport

ACTION: Notice of request for public comment.

SUMMARY: The Department of State is seeking Office of Management and Budget (OMB) approval for the information collection described below. In accordance with the Paperwork Reduction Act of 1995, we are requesting comments on this collection from all interested individuals and organizations. The purpose of this notice is to allow 60 days for public comment preceding submission of the collection to OMB.

DATES: The Department will accept comments from the public up to *June 3, 2016.*

ADDRESSES: You may submit comments by any of the following methods:

- *Web:* Persons with access to the Internet may comment on this notice by going to *www.Regulations.gov.* You can search for the document by entering "Docket Number: DOS–2016–0018" in the Search field. Then click the "Comment Now" button and complete the comment form.
- *Email: PPTFormsOfficer@state.gov.*

You must include the DS form number (if applicable), information collection title, and the OMB control number in any correspondence.

FOR FURTHER INFORMATION CONTACT: Direct requests for additional information regarding the collection listed in this notice, including requests for copies of the proposed collection instrument and supporting documents, to PPT Forms Officer, U.S. Department of State, CA/PPT/S/L 44132 Mercure Cir, P.O. Box 1227, Sterling, VA 20166–1227, or at *PPTFormsOfficer@state.gov.*

SUPPLEMENTARY INFORMATION:

- *Title of Information Collection:* Application for a U.S. Passport.
- *OMB Control Number:* 1405–0004.
- *Type of Request:* Revision of a Currently Approved Collection.
- *Originating Office:* Bureau of Consular Affairs, Passport Services, Office of Legal Affairs and Law Enforcement Liaison (CA/PPT/S/L).
- *Form Number:* DS–11.
- *Respondents:* Individuals or Households.
- *Estimated Number of Respondents:* 11,763,831.
- *Estimated Number of Responses:* 11,763,831.
- *Average Time per Response:* 85 Minutes.
- *Total Estimated Burden Time:* 16,665,427 hours.
- *Frequency:* On occasion.
- *Obligation to Respond:* Required to Obtain a Benefit.

We are soliciting public comments to permit the Department to:

- Evaluate whether the proposed information collection is necessary for the proper functions of the Department.
- Evaluate the accuracy of our estimate of the time and cost burden for this proposed collection, including the validity of the methodology and assumptions used.
- Enhance the quality, utility, and clarity of the information to be collected.
- Minimize the reporting burden on those who are to respond, including the use of automated collection techniques

or other forms of information technology.

Please note that comments submitted in response to this Notice are public record. Before including any detailed personal information, you should be aware that your comments as submitted, including your personal information, will be available for public review.

Abstract of proposed collection:

The DS–11 solicits data necessary for Passport Services to issue a United States passport (book and/or card format) pursuant to authorities granted to the Secretary of State by 22 U.S.C. 211a *et seq.* and E.O. 11295 (August 5, 1966) for the issuance of passports to U.S. nationals.

The issuance of U.S. passports requires the determination of identity, nationality, and entitlement with reference to the provisions of Title III of the Immigration and Nationality Act (INA) (8 U.S.C. 1401–1504), the 14th Amendment to the Constitution of the United States, other applicable treaties and laws, and implementing regulations at 22 CFR parts 50 and 51. The specific regulations pertaining to the Application for a U.S. Passport are at 22 CFR 51.20 through 51.28.

Methodology:

The information collected on the DS–11 is used to facilitate the issuance of passports to U.S. citizens and nationals. The primary purpose of soliciting the information is to establish citizenship, identity, and entitlement to the issuance of the U.S. passport or related service, and to properly administer and enforce the laws pertaining to the issuance thereof.

Passport Services collects information from U.S. citizens and non-citizen nationals when they complete and submit the Application for a U.S. Passport. Passport applicants can either download the DS–11 from the internet or obtain one from an Acceptance Facility/Passport Agency. The form must be completed and executed at an acceptance facility or passport agency, and submitted with evidence of citizenship and identity.

Additional information:

The proposed renewal of the DS–11 includes an advisory on the instructions that lawful permanent resident cards (green cards) that are submitted with Form DS–11 will be forwarded to U.S. Citizen and Immigration Services if the applicant is found to be a U.S. citizen. This advisory is consistent with an arrangement between the Department of State and the Department of Homeland Security, as green cards are property of the Department of Homeland Security.

The proposed renewal of Form DS–11 also includes a new instruction to applicants requiring submission of a photocopy of the applicant's evidence of U.S. citizenship, in addition to the official or certified copy that is currently required. The official or certified copy will continue to be used to determine whether the applicant has a valid claim to U.S. citizenship. The photocopy will be retained by the Department so that the Department has a complete and accurate record of what the applicant submitted with his or her U.S. passport application. Evidence of U.S. citizenship, however, is only annotated on the application, and a certified copy is generally not retained. The Department considered different alternatives to having the applicant submit a photocopy in addition to the official or certified copy; however, none of these alternatives were logistically feasible or cost effective. Based on a resource analysis study, the additional costs for labor, equipment, supplies, facility modifications and obtaining additional space makes it not feasible for the Department to make photocopies of primary citizenship evidence without significantly affecting agency operations and passport processing times. The Department determined that adding the requirement for a photocopy of the applicant's evidence of U.S. citizenship is the only feasible way to create a complete record of the documentation submitted with applications. The Department also believes that retaining copies of applicants' evidence of U.S. citizenship will help the Department develop and deliver online passport applicant services. Applicants currently submit a photocopy of their photo identification.

The Privacy Act statement has been amended to clarify that an applicant's failure to provide his or her Social Security number may result in the denial of an application, consistent with Section 32101 of the Fixing America's Surface Transportation Act (Pub. L. 114–94) which authorizes the Department to deny U.S. passport applications when the applicant failed to include his or her Social Security number. It also makes clear that failure to include one's Social Security number may also subject the applicant to a penalty enforced by the International Revenue Service. These requirements and the underlying legal authorities are further described on page 3 of the instructions titled "Federal Tax Law" which has also been amended to include a reference to Public Law 114–94.

Dated: March 18, 2016.

Brenda S. Sprague,

Deputy Assistant Secretary for Passport Services, Bureau of Consular Affairs, Department of State.

[FR Doc. 2016–07617 Filed 4–1–16; 8:45 am]

BILLING CODE 4710–06–P

SURFACE TRANSPORTATION BOARD

[Docket No. AB 55 (Sub-No. 759X)]

CSX Transportation, Inc.—Discontinuance of Service Exemption—In Greenbrier and Fayette Counties, W. Va.

CSX Transportation, Inc. (CSXT), filed a verified notice of exemption under 49 CFR part 1152 subpart F—*Exempt Abandonments and Discontinuances of Service* to discontinue service over an approximately 6.0-mile rail line on its Southern Region, Huntington Division, Sewell Valley Subdivision, Engineering C&O Division, from milepost CAF 21.0 to milepost CAF 27.0, near Rainelle, in Greenbrier and Fayette Counties, W. Va. (the Line). The Line traverses U.S. Postal Service Zip Code 25962, and includes the station of Rainelle Jct., at milepost CAF 21.0 (FSAC 83044/OPSL 62375).

CSXT has certified that: (1) No local freight traffic has moved over the Line for at least two years; (2) because the Line is not a through line, no overhead traffic has operated or needs to be rerouted; (3) no formal complaint filed by a user of rail service on the Line (or by a state or local government entity acting on behalf of such user) regarding cessation of service over the Line is pending either with the Surface Transportation Board or any U.S. District Court or has been decided in favor of a complainant within the two-year period; and (4) the requirements at 49 CFR 1105.12 (newspaper publication) and 49 CFR 1152.50(d)(1) (notice to governmental agencies) have been met.

As a condition to this exemption, any employee adversely affected by the discontinuance of service shall be protected under *Oregon Short Line Railroad—Abandonment Portion Goshen Branch Between Firth & Ammon, in Bingham & Bonneville Counties, Idaho,* 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10502(d) must be filed.

Provided no formal expression of intent to file an offer of financial assistance (OFA) to subsidize continued rail service has been received, this exemption will become effective on May 4, 2016,[1] unless stayed pending reconsideration. Petitions to stay that do not involve environmental issues and formal expressions of intent to file an OFA to subsidize continued rail service under 49 CFR 1152.27(c)(2) [2] must be filed by April 14, 2016.[3] Petitions to reopen must be filed by April 25, 2016, with the Surface Transportation Board, 395 E Street SW., Washington, DC 20423–0001.

A copy of any petition filed with the Board should be sent to CSXT's representative: Louis E. Gitomer, Law Offices of Louis E. Gitomer, LLC, 600 Baltimore Avenue, Suite 301, Towson, MD 21204.

If the verified notice contains false or misleading information, the exemption is void ab initio.

Board decisions and notices are available on our Web site at *WWW.STB.DOT.GOV.*

Decided: March 24, 2016.

By the Board, Joseph H. Dettmar, Acting Director, Office of Proceedings.

Tia Delano,

Clearance Clerk.

[FR Doc. 2016–07565 Filed 4–1–16; 8:45 am]

BILLING CODE 4915–01–P

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

Agency Information Collection Activities: Information Collection Renewal; Comment Request; Examination Questionnaire

AGENCY: Office of the Comptroller of the Currency (OCC), Treasury.

ACTION: Notice and request for comment.

SUMMARY: The OCC, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to comment on the renewal of an information collection, as required by the Paperwork Reduction Act of 1995 (PRA).

An agency may not conduct or sponsor, and a respondent is not required to respond to, an information collection unless it displays a currently valid Office of Management and Budget (OMB) control number.

The OCC is soliciting comment concerning renewal of its information collection titled, "Examination Questionnaire."

DATES: Comments must be submitted by June 3, 2016.

ADDRESSES: Because paper mail in the Washington, DC area and at the OCC is subject to delay, commenters are encouraged to submit comments by email, if possible. Comments may be sent to: Legislative and Regulatory Activities Division, Office of the Comptroller of the Currency, Attention: 1557–0199, 400 7th Street SW., Suite 3E–218, Mail Stop 9W–11, Washington, DC 20219. In addition, comments may be sent by fax to (571) 465–4326 or by electronic mail to *regs.comments@occ.treas.gov.* You may personally inspect and photocopy comments at the OCC, 400 7th Street SW., Washington, DC 20219. For security reasons, the OCC requires that visitors make an appointment to inspect comments. You may do so by calling (202) 649–6700 or, for persons who are deaf or hard of hearing, TTY, (202) 649–5597. Upon arrival, visitors will be required to present valid government-issued photo identification and submit to security screening in order to inspect and photocopy comments.

All comments received, including attachments and other supporting materials, are part of the public record and subject to public disclosure. Do not include any information in your comment or supporting materials that you consider confidential or inappropriate for public disclosure.

FOR FURTHER INFORMATION CONTACT: Shaquita Merritt, Clearance Officer, (202) 649–5490 or, for persons who are deaf or hard of hearing, TTY, (202) 649–5597, Legislative and Regulatory Activities Division, Office of the Comptroller of the Currency, 400 7th Street SW., Washington, DC 20219.

SUPPLEMENTARY INFORMATION: Under the PRA (44 U.S.C. 3501–3520), Federal agencies must obtain approval from the OMB for each collection of information they conduct or sponsor. "Collection of information" is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) to include agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires Federal agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, the OCC is publishing notice of the proposed collection of information set forth in this document.

The OCC is proposing to extend the approval for the following information collection:

Title: Examination Questionnaire.

OMB Control No.: 1557–0199.

Affected Public: Businesses or other for-profit.

Type of Review: Extension of a currently approved collection.

Abstract: The OCC provides each national bank or Federal savings association with an Examination Survey at the end of its supervisory cycle (12- or 18-month period). This information collection permits banks to assess the OCC's bank supervisory activities, including the:

- Effectiveness of OCC communications with the bank;
- Reasonableness of OCC requests for data and information;
- Quality of OCC decisionmaking during the exam process;
- Professionalism of OCC examining staff; and
- Responsiveness of OCC examiners.

The OCC developed the survey at the suggestion of the banking industry. Banking industry members expressed a desire to provide examination-related feedback to the OCC. The Comptroller of the Currency and OCC supervisory staff considered that expressed need and concurred. Further, the Comptroller of the Currency and OCC supervisory staff find this information collection to be an important tool for measuring OCC examination performance, designing more efficient and effective examinations, and targeting examiner training.

This information collection continues to formalize and promote a long-standing OCC program. The OCC always has given the institutions it supervises the opportunity to provide input regarding the examination process.

The Post Exit Survey is no longer being used and has been deleted from this collection.

Burden Estimates:

Estimated Number of Respondents: 1,212.

Estimated Number of Responses per Respondent per Year: 0.65.

Estimated Number of Responses: 788.

Estimated Time per Response: 10 minutes.

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[1] Pursuant to 49 CFR 1152.50(d)(2), the railroad must file a verified notice with the Board at least 50 days before an abandonment or discontinuance is to be consummated. CSXT has indicated a proposed consummation date of May 3, 2016, but, because the verified notice was filed on March 15, 2016, the earliest this transaction may be consummated is May 4, 2016.

[2] Each OFA must be accompanied by the filing fee, which is currently set at $1,600. *See* 49 CFR 1002.2(f)(25).

[3] Because this is a discontinuance proceeding and not an abandonment, interim trail use/rail banking and public use conditions are not appropriate. Because there will be an environmental review during abandonment, this discontinuance does not require an environmental review.

Estimated Annual Burden: 131 hours.

Comments: All comments will be considered in formulating the subsequent submission and become a matter of public record. Comments are invited on:

(a) Whether the collection of information is necessary for the proper performance of the functions of the OCC, including whether the information has practical utility;

(b) The accuracy of the OCC's estimate of the information collection burden;

(c) Ways to enhance the quality, utility, and clarity of the information to be collected;

(d) Ways to minimize the burden of the collection on respondents, including through the use of automated collection techniques or other forms of information technology; and

(e) Estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: March 29, 2016.

Mary Hoyle Gottlieb,

Regulatory Specialist, Legislative and Regulatory Activities Division.

[FR Doc. 2016–07592 Filed 4–1–16; 8:45 am]

BILLING CODE 4810–33–P

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

Agency Information Collection Activities: Information Collection Renewal; Comment Request; Lending Limits

AGENCY: Office of the Comptroller of the Currency (OCC), Treasury.

ACTION: Notice and request for comment.

SUMMARY: The OCC, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to comment on the renewal of an information collection, as required by the Paperwork Reduction Act of 1995 (PRA).

An agency may not conduct or sponsor, and a respondent is not required to respond to, an information collection unless it displays a currently valid Office of Management and Budget (OMB) control number.

The OCC is soliciting comment concerning renewal of its information collection titled, “Lending Limits.”

DATES: Comments must be submitted by June 3, 2016.

ADDRESSES: Because paper mail in the Washington, DC area and at the OCC is subject to delay, commenters are encouraged to submit comments by email, if possible. Comments may be sent to: Legislative and Regulatory Activities Division, Office of the Comptroller of the Currency, Attention: 1557–0221, 400 7th Street SW., Suite 3E–218, Mail Stop 9W–11, Washington, DC 20219. In addition, comments may be sent by fax to (571) 465–4326 or by electronic mail to *regs.comments@occ.treas.gov.* You may personally inspect and photocopy comments at the OCC, 400 7th Street SW., Washington, DC 20219. For security reasons, the OCC requires that visitors make an appointment to inspect comments. You may do so by calling (202) 649–6700 or, for persons who are deaf or hard of hearing, TTY, (202) 649–5597. Upon arrival, visitors will be required to present valid government-issued photo identification and submit to security screening in order to inspect and photocopy comments.

All comments received, including attachments and other supporting materials, are part of the public record and subject to public disclosure. Do not include any information in your comment or supporting materials that you consider confidential or inappropriate for public disclosure.

FOR FURTHER INFORMATION CONTACT: Shaquita Merritt, Clearance Officer, (202) 649–5490 or, for persons who are deaf or hard of hearing, TTY, (202) 649–5597, Legislative and Regulatory Activities Division, Office of the Comptroller of the Currency, 400 7th Street SW., Washington, DC 20219.

SUPPLEMENTARY INFORMATION: Under the PRA (44 U.S.C. 3501–3520), Federal agencies must obtain approval from the OMB for each collection of information they conduct or sponsor. “Collection of information” is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) to include agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires Federal agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, the OCC is publishing notice of the renewal of the collection of information set forth in this document.

Title: Lending Limits.

OMB Control No.: 1557–0221 (12 CFR 32.7) (Merging in 1557–0317 (12 CFR 32.7)).

Affected Public: Businesses or other for-profit.

Type of Review: Extension of a currently approved collection.

Abstract: 12 CFR 32.7(a) provides that, in addition to the amount that a national bank or savings association may lend to one borrower under 12 CFR 32.3, an eligible national bank or savings association may make:

- Residential real estate loans or extensions of credit to one borrower in the lesser of the following two amounts: 10 percent of its capital and surplus; or the percent of its capital and surplus, in excess of 15 percent, that a State bank or savings association is permitted to lend under the State lending limit that is available for residential real estate loans or unsecured loans in the state where the main office of the national bank or savings association is located;
- Small business loans or extensions of credit to one borrower in the lesser of the following two amounts: 10 percent of its capital and surplus; or the percent of its capital and surplus, in excess of 15 percent, that a State bank is permitted to lend under the state lending limit that is available for small business loans or unsecured loans in the state where the main office of the national bank or home office of the savings association is located; and
- Small farm loans or extensions of credit to one borrower in the lesser of the following two amounts: 10 percent of its capital and surplus; or the percent of its capital and surplus, in excess of 15 percent, that a State bank or savings association is permitted to lend under the State lending limit that is available for small farm loans or unsecured loans in the State where the main office of the national bank or savings association is located.

An eligible national bank or savings association must submit an application to, and receive approval from, its supervisory office before using the supplemental lending limits in § 32.7(a). The supervisory office may approve a completed application if it finds that approval is consistent with safety and soundness. Section 32.7(b) provides that the application must include:

(1) Certification that the national bank or savings association is an eligible bank or eligible savings association;

(2) Citations to relevant State laws or regulations;

(3) A copy of a written resolution by a majority of the bank's or savings association's board of directors approving the use of the limits, and confirming the terms and conditions for use of this lending authority; and

(4) A description of how the board will exercise its continuing

responsibility to oversee the use of this lending authority.

12 CFR 32.9(b) provides national banks and savings associations with three alternative methods for calculating the credit exposure of derivative transactions other than credit derivatives (the Internal Model Method, the Conversion Factor Matrix Method, and the Remaining Maturity Method) and two alternative methods for calculating such exposure for securities financing transactions. The OCC provided these models to reduce the practical burden of such calculations, particularly for small and mid-size banks and savings associations.

Under 12 CFR 32.9(b)(1)(i)(C)(*1*), the use of a model (other than the model approved for purposes of the Advanced Measurement Approach in the capital rules) must be approved by the OCC specifically for part 32 purposes and must be approved in writing. If a national bank or Federal savings association proposes to use an internal model that has been approved by the OCC for purposes of the Advanced Measurement Approach, the institution must provide prior written notification to the OCC prior to use of the model for lending limits purposes. OCC approval also is required before substantive revisions are made to a model that is used for lending limits purposes.

Estimated Number of Respondents: 295.

Estimated Annual Burden: 1,958 hours.

All comments will be considered in formulating the subsequent submission and become a matter of public record. Comments are invited on:

(a) Whether the collection of information is necessary for the proper performance of the functions of the OCC, including whether the information has practical utility;

(b) The accuracy of the OCC's estimate of the information collection burden;

(c) Ways to enhance the quality, utility, and clarity of the information to be collected;

(d) Ways to minimize the burden of the collection on respondents, including through the use of automated collection techniques or other forms of information technology; and

(e) Estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: March 29, 2016.

Mary Hoyle Gottlieb,

Regulatory Specialist, Legislative and Regulatory Activities Division.

[FR Doc. 2016–07597 Filed 4–1–16; 8:45 am]

BILLING CODE 4810–33–P

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

Agency Information Collection Activities: Information Collection Renewal; Comment Request; Community and Economic Development Entities, Community Development Projects, and Other Public Welfare Investments

AGENCY: Office of the Comptroller of the Currency (OCC), Treasury.

ACTION: Notice and request for comment.

SUMMARY: The OCC, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on a continuing information collection, as required by the Paperwork Reduction Act of 1995 (PRA).

An agency may not conduct or sponsor, and a respondent is not required to respond to, an information collection unless it displays a currently valid Office of Management and Budget (OMB) control number.

The OCC is soliciting comment concerning its information collection titled, "Community and Economic Development Entities, Community Development Projects, and Other Public Welfare Investments," under 12 CFR 24 ("Part 24").

DATES: Comments must be submitted on or before June 3, 2016.

ADDRESSES: Because paper mail in the Washington, DC area and at the OCC is subject to delay, commenters are encouraged to submit comments by email, if possible. Comments may be sent to: Legislative and Regulatory Activities Division, Office of the Comptroller of the Currency, Attention: 1557–0194, 400 7th Street SW., Suite 3E–218, Mail Stop 9W–11, Washington, DC 20219. In addition, comments may be sent by fax to (571) 465–4326 or by electronic mail to *regs.comments@occ.treas.gov.* You may personally inspect and photocopy comments at the OCC, 400 7th Street SW., Washington, DC 20219. For security reasons, the OCC requires that visitors make an appointment to inspect comments. You may do so by calling (202) 649–6700 or, for persons who are deaf or hard of hearing, TTY, (202) 649–5597. Upon arrival, visitors will be required to present valid government-issued photo identification and to submit to security screening in order to inspect and photocopy comments.

All comments received, including attachments and other supporting materials, are part of the public record and subject to public disclosure. Do not enclose any information in your comment or supporting materials that you consider confidential or inappropriate for public disclosure.

FOR FURTHER INFORMATION CONTACT: Shaquita Merritt, OCC Clearance Officer, (202) 649–5490 or, for persons who are deaf or hard of hearing, TTY, (202) 649–5597, Legislative and Regulatory Activities Division, Office of the Comptroller of the Currency, 400 7th Street SW., Suite 3E–218, Mail Stop 9W–11, Washington, DC 20219.

SUPPLEMENTARY INFORMATION: Under the PRA (44 U.S.C. 3501–3520), Federal agencies must obtain approval from OMB for each collection of information they conduct or sponsor. "Collection of information" is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) to include agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires Federal agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, the OCC is publishing notice of the proposed collection of information set forth in this document.

The OCC is proposing to extend the following information collection:

Title: Community and Economic Development Entities, Community Development Projects, and Other Public Welfare Investments.

OMB Control No.: 1557–0194.

Description: This submission covers an existing regulation and revisions to the Part 24, CD–1, National Bank Community Development Investments form contained in the regulation, pursuant to which a national bank may notify the OCC, or request OCC approval, of certain community development investments.

Section 24.5(a) provides that an eligible national bank may make an investment without prior notification to, or approval by, the OCC if the bank submits an after-the-fact notification of an investment within 10 days of making the investment.

Section 24.4(a) provides that a national bank may submit a written request or letter to the OCC to exceed the five percent limit for its aggregate, outstanding investments. The OCC may grant permission to the bank to make subsequent public welfare investments without prior notification to, or approval by the OCC, using the after-the-fact notification process consistent with Section 24.5(a).

Section 24.5(a)(5) provides that a national bank that is not an eligible bank, but that is at least adequately capitalized and has a composite rating of at least 3 with improving trends under the Uniform Financial Institutions Rating System, may submit a letter to the OCC requesting authority to submit after-the-fact notices of its investments.

Section 24.5(b) provides that if a national bank does not meet the requirements for after-the-fact notification, including if the bank's aggregate outstanding investments exceed the five percent limit, unless previously approved by the OCC for subsequent public welfare investments, the bank must submit an investment proposal to the OCC seeking permission to make the public welfare investment.

The OCC requests that OMB approve its revised estimates and extend its approval of the information collection.

Type of Review: Regular.

Affected Public: Individuals; Businesses or other for-profit.

Estimated Number of Respondents: 1100.

Estimated Total Annual Responses: 1100.

Frequency of Response: On occasion.

Estimated Total Annual Burden: 1710 hours.

Comments submitted in response to this notice will be summarized and included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on:

(a) Whether the collection of information is necessary for the proper performance of the functions of the OCC, including whether the information has practical utility;

(b) The accuracy of the OCC's estimate of the burden of the collection of information;

(c) Ways to enhance the quality, utility, and clarity of the information to be collected;

(d) Ways to minimize the burden of the collection on respondents, including through the use of automated collection techniques or other forms of information technology; and

(e) Estimates of capital or startup costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: March 29, 2016.

Mary Hoyle Gottlieb,

Regulatory Specialist, Legislative and Regulatory Activities Division.

[FR Doc. 2016–07591 Filed 4–1–16; 8:45 am]

BILLING CODE 4810–33–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0716]

Proposed Information Collection (Complaint of Employment Discrimination, VA Form 4939; Information for Pre-Complaint Processing, VA Form 08–10192); Activity: Comment Request

AGENCY: The Office of Resolution Management, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Office of Resolution Management (ORM), Department of Veterans Affairs (VA), is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed revision of a currently approved collection, and allow 60 days for public comment in response to the notice. This notice solicits comments on information needed to process a complaint of employment discrimination.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before June 3, 2016.

ADDRESSES: Submit written comments on the collection of information through Federal Docket Management System (FDMS) at *www.Regulations.gov;* or Pamela Johnson, Office of Resolution Management (08), Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420 or email: *Pamela.Johnson@va.gov.* Please refer to "Complaint of Employment, OMB Control No. 2900–0716" in any correspondence. During the comment period, comments may be viewed online through the FDMS.

FOR FURTHER INFORMATION CONTACT: Pamela Johnson at (501) 257–1585.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995 (Pub. L. 104–13; 44 U.S.C. 3501–3521), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to Section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, ORM invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of ORM's functions, including whether the information will have practical utility; (2) the accuracy of ORM's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

Titles: Complaint of Employment Discrimination, VA Form 4939. Information for Pre-Complaint Processing, VA Form 08–10192.

OMB Control Number: 2900–0716.

Type of Review: Revision request for inclusion of VA Form 08–10192.

Abstract: VA employees, former employees and applicants for employment who believe they were denied employment based on race, color, religion, gender, national origin, age, physical or mental disability and/or reprisal for prior Equal Employment Opportunity activity complete VA Form 4939 to file a complaint of discrimination. VA Form 08–10192 is the initial contact form filled out by individuals who believe they may have been discriminated against.

Affected Public: Individuals or Households.

Estimated Annual Burden: 512 burden hours.

Estimated Average Burden per Respondent: 30 minutes.

Frequency of Response: Annually.

Estimated Number of Respondents: 1022.

By direction of the Secretary.

Kathleen M. Manwell,

VA Privacy Service, Office of Privacy and Records Management, Department of Veterans Affairs.

[FR Doc. 2016–07447 Filed 4–1–16; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900—NEW]

Proposed Information Collection (The Veterans Metrics Initiative: Linking Program Components to Post-Military Well-Being); Activity: Comment Request

AGENCY: Veterans Health Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Veterans Health Administration (VHA) is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each new collection, and allow 60 days for public comment in response to the notice. This notice solicits comments on information needed to assess a longitudinal study design to assess the well-being of a large sample of transitioning Veterans over time, while simultaneously examining the extent and range of program use by these Veterans over the same period.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before June 3, 2016.

ADDRESSES: Submit written comments on the collection of information through the Federal Docket Management System (FDMS) at *www.Regulations.gov;* or to Brian McCarthy, Office of Regulatory and Administrative Affairs, Veterans Health Administration (10B4), Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420 or email: *Brian.McCarthy4@va.gov.* Please refer to "OMB Control No. 2900—NEW" in any correspondence. During the comment period, comments may be viewed online through FDMS.

FOR FURTHER INFORMATION CONTACT: Brian McCarthy at (202) 461–6345.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995 (Pub. L. 104–13; 44 U.S.C. 3501–3521), Federal agencies must obtain approval from OMB for each collection of information they conduct or sponsor. This request for comment is being made pursuant to Section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VHA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of VHA's functions, including whether the information will have practical utility; (2) the accuracy of VHA's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

Title

The Veterans Metrics Initiative: Linking Program Components to Post-Military Well-Being.

OMB Control Number: 2900—NEW.

Type of Review: New collection.

Abstract

The concept and design of The Veterans Metrics Initiative (TVMI) were developed by a multi-disciplinary team of scientists from Department of Veterans Affairs, Department of Defense, academia, and private enterprise, under the auspices of the Henry Jackson Foundation for the Improvement of Military Medicine, to address the question: What works to help newly separated Veterans in their transition and reintegration into civilian life?

To answer this question, The Veterans Metrics Initiative will use a longitudinal study design to assess the well-being of a large sample of transitioning Veterans over time, while simultaneously examining the extent and range of program use by these Veterans over the same period. Because individual programs are numerous, widespread and often alike in design and service delivery, TVMI focuses specific and unique attention on program "components" as drivers of change. "Components" are defined as design and delivery elements that may be shared across multiple distinct programs separated geographically, administratively, or by their funding sources, but which exhibit undeniable similarities in their manner of approach to providing help. Simply, put, common components are techniques, strategies, or features used as part of a program. Components within programs include: (a) Knowledge (*e.g.,* problem solving and coping skills); (b) process (*e.g.,* mode: Online and face-to-face; method: Direct instruction and modeling); (c) barrier reduction (*e.g.,* tangible support); and (d) sustainability components (*e.g.,* social support and referrals).

Affected Public: Individuals or households.

Estimated Annual Burden

a. Baseline Survey, VA Form 10–1500194(WS)—5,625 hours.
b. 6 mo. Survey, VA Form 10–1500189(WS)—3,938 hours.
c. 12 mo. Survey, VA Form 10–1500190(WS)—3,544 hours.
d. 18 mo. Survey, VA Form 10–1500191(WS)—3,190 hours.
e. 24 mo. Survey, VA Form 10–1500192(WS)—2,871 hours.
f. 30 mo. Survey, VA Form 10–1500193(WS)—2,584 hours.

Estimated Average Burden per Respondent

a. Baseline Survey, VA Form 10–1500194(WS)—45 minutes.
b. 6 mo. Survey, VA Form 10–1500189(WS)—35 minutes.
c. 12 mo. Survey, VA Form 10–1500190(WS)—35 minutes.
d. 18 mo. Survey, VA Form 10–1500191(WS)—35 minutes.
e. 24 mo. Survey, VA Form 10–1500192(WS)—35 minutes.
f. 30 mo. Survey, VA Form 10–1500193(WS)—35 minutes.

Frequency of Response: Annually.

Estimated Annual Responses

a. Baseline Survey, VA Form 10–1500194(WS)—7,500.
b. 6 mo. Survey, VA Form 10–1500189(WS)—6,750.
c. 12 mo. Survey, VA Form 10–1500190(WS)—6,075.
d. 18 mo. Survey, VA Form 10–1500191(WS)—5,468.
e. 24 mo. Survey, VA Form 10–1500192(WS)—4,921.
f. 30 mo. Survey, VA Form 10–1500193(WS)—4,429.

By direction of the Secretary.

Kathleen M. Manwell,

Program Analyst, VA Privacy Service, Office of Privacy and Records Management, Department of Veterans Affairs.

[FR Doc. 2016–07448 Filed 4–1–16; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0144]

Proposed Information Collection—Department of Housing and Urban Development (HUD)/Department of Veterans Affairs (VA) Addendum to Uniform Residential Loan Application (VA Form 26–1802A); Activity: Comment Request

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Veterans Benefits Administration (VBA), Department of Veterans Affairs (VA), is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed revision of a currently approved collection, and allow 60 days for public comment in response to the notice.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before June 3, 2016.

ADDRESSES: Submit written comments on the collection of information through Federal Docket Management System (FDMS) at *www.Regulations.gov* or to Nancy J. Kessinger, Veterans Benefits Administrations (20M33), Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420 or email to *nancy.kessinger@va.gov.* Please refer to "OMB Control No. 2900–0144" in any correspondence. During the comment period, comments may be viewed online through FDMS.

FOR FURTHER INFORMATION CONTACT: Nancy J. Kessinger at (202) 632–8924 or FAX (202) 632–8925.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995 (Pub. L. 104–13; 44 U.S.C. 3501–21), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to section 3506 (c)(2)(A) of the PRA.

With respect to the following collection of information, VBA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of VBA's functions, including whether the information will have practical utility; (2) the accuracy of VBA's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

Title: Department of Housing and Urban Development (HUD)/Department of Veterans Affairs (VA) Addendum to Uniform Residential Loan Application.

OMB Control Number: 2900–0144.

Type of Review: Revision of a currently approved collection.

Abstract: VA Form 26–1802a, Department of Housing and Urban Development (HUD)/Department of Veterans Affairs (VA) Addendum to Uniform Residential Loan Application, serve as the lender's and veteran's application for home loans authorized by 38 U.S.C. This form is completed in conjunction with the standard Uniform Residential Loan Application (URLA) as it captures information unique to VA-guaranteed home loans.

Affected Public: Individuals or households.

Estimated Annual Burden: 35,000 hours.

Estimated Average Burden per Respondent: 6 minutes.

Frequency of Response: One-time.

Estimated Number of Respondents: 350,000.

By direction of the Secretary.

Kathleen M. Manwell,

Program Analyst, VA Privacy Service, Office of Privacy and Records Management, Department of Veterans Affairs.

[FR Doc. 2016–07445 Filed 4–1–16; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0055]

Proposed Information Collection (Request for Determination of Loan Guaranty Eligibility—Unmarried Surviving Spouses); Activity: Comment Request

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice; correction.

SUMMARY: The Department of Veterans Affairs (VA) published a collection of information notice in the **Federal Register** on March 21, 2016, which contained errors. The notice incorrectly stated the number of respondents as 25 instead of 5,000 and the number of burden hours as 4 instead of 833.

FOR FURTHER INFORMATION CONTACT: Crystal Rennie, Enterprise Records Service (005R1B), Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420, at 202–632–7492.

Correction

In FR Doc. 2016–06271, published on March 21, 2016 at 81 FR 15152, make the following correction. On page 15152 in the third column, the notice should read as follows:

Estimated Annual Burden: 833.

Estimated Number of Respondents: 5,000.

SUMMARY: The Veterans Benefits Administration (VBA), Department of Veterans Affairs (VA), is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed revision of a currently approved collection, and allow 60 days for public comment in response to the notice.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before June 3, 2016.

ADDRESSES: Submit written comments on the collection of information through Federal Docket Management System (FDMS) at *www.Regulations.gov* or to Nancy J. Kessinger, Veterans Benefits Administration (20M33), Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420 or email to *nancy.kessinger@va.gov.* Please refer to "OMB Control No. 2900–0055" in any correspondence. During the comment period, comments may be viewed online through FDMS.

FOR FURTHER INFORMATION CONTACT: Nancy J. Kessinger at (202) 632–8924 or FAX (202) 632–8925.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995 (Pub. L. 104–13; 44 U.S.C. 3501–3521), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to Section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VBA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of VBA's functions, including whether the information will have practical utility; (2) the accuracy of VBA's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

Title: Request for Determination of Loan Guaranty Eligibility—Unmarried Surviving Spouses.

OMB Control Number: 2900–0055.

Type of Review: Revision of a currently approved collection.

Abstract: Section 3702(c) of Title 38, U.S.C. states that any veteran may apply to the Secretary for a certificate of eligibility. A completed VA Form 26–1817 constitutes a formal request by the unmarried surviving spouse of a veteran for a certificate of eligibility.

Affected Public: Individuals or households.

Estimated Annual Burden: 833 hours.

Estimated Average Burden per Respondent: 10 minutes.

Frequency of Response: One-time.

Estimated Number of Respondents: 5,000.

By direction of the Secretary.

Kathleen M. Manwell,

Program Analyst, VA Privacy Service, Office of Privacy and Records Management, Department of Veterans Affairs.

[FR Doc. 2016–07444 Filed 4–1–16; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0154]

Agency Information Collection (Application for VA Education Benefits, Application for Family Member to Use Transferred Benefits, Application for VA Education Benefits Under the National Call to Service (NCS) Program and Application for Veterans Retraining Assistance Program) Activity Under OMB Review

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–3521), this notice announces that the Veterans Benefits Administration (VBA), Department of Veterans Affairs, will submit the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden; it includes the actual data collection instrument.

DATES: Comments must be submitted on or before May 4, 2016.

ADDRESSES: Submit written comments on the collection of information through *www.Regulations.gov,* or to Office of Information and Regulatory Affairs, Office of Management and Budget, Attn: VA Desk Officer; 725 17th St. NW., Washington, DC 20503 or sent through electronic mail to *oira_submission@omb.eop.gov.* Please refer to "OMB Control No. 2900–0154" in any correspondence.

FOR FURTHER INFORMATION CONTACT: Crystal Rennie, Enterprise Records Service (005R1B), Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420, (202) 632–7492 or email *crystal.rennie@va.gov.* Please refer to "OMB Control No. 2900–0154."

SUPPLEMENTARY INFORMATION:

Title: Application for VA Education Benefits, Application for Family Member to Use Transferred Benefits, Application for VA Education Benefits Under the NCS Program and Application for Veterans Retraining Assistance Program.

OMB Control Number: 2900–0154.

Type of Review: Revision of a currently approved collection.

Abstract

A. VA Form 22–1990 is completed by claimants who are submitting an initial (or original) claim for VA education benefits.

B. VA Form 22–1990E is completed by a claimant who wishes to transfer his or her Montgomery GI Bill entitlement to their dependent(s).

C. VA Form 22–1990N is used by a claimant who signed an enlistment contract with the Department of Defense for the NCS program and elected one of two education incentives.

D. VA Form 22–1990R is used by a claimant to request assistance in retraining to enter the workforce.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The **Federal Register** Notice with a 60-day comment period soliciting comments on this collection of information was published at 80 FR 31694 on December 17, 2015, pages 78820–78821.

Affected Public: Individuals or Households.

Estimated Annual Burden: 214,881 hours.

Estimated Average Burden per Respondent: 15 minutes.

Frequency of Response: One-time.

Estimated Number of Respondents: 859,522 respondents.

- VA Form 22–1990 consists of 859,128 responses received via (Paper & VONAPP) for 2013, 2014 and 2015 rendering a total of 214,783 burden hours.
- VA Form 22–1990N consists of 37 responses received via (VONAPP) for 2013, 2014 and 2015 rendering a total of 9 burden hours.
- VA Form 1990E consists of 357 responses received via (VONAPP) for 2013, 2014 and 2015 rendering a total of 89 burden hours.
- VA Form 22–1990R consists of 0 responses received via (VONAPP for 2013, 2014 and 2015 rendering 0 burden hours.

By direction of the Secretary.

Kathleen M. Manwell,

Program Analyst, VA Privacy Service, Office of Privacy and Records Management, Department of Veterans Affairs.

[FR Doc. 2016–07446 Filed 4–1–16; 8:45 am]

BILLING CODE 8320–01–P

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FEDERAL REGISTER

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Part II

Department of Commerce

Patent and Trademark Office

37 CFR Part 2
Miscellaneous Changes to Trademark Trial and Appeal Board Rules of Practice; Proposed Rules

DEPARTMENT OF COMMERCE

Patent and Trademark Office

37 CFR Part 2

[Docket No. PTO–T–2009–0030]

RIN 0651–AC35

Miscellaneous Changes to Trademark Trial and Appeal Board Rules of Practice

AGENCY: United States Patent and Trademark Office, Commerce.

ACTION: Notice of Proposed Rulemaking.

SUMMARY: The United States Patent and Trademark Office ("USPTO" or "Office") proposes to amend the Trademark Rules of Practice ("Trademark Rules" or "Rules"), in particular the rules pertinent to practice before the Trademark Trial and Appeal Board ("Board"), to benefit the public by providing for more efficiency and clarity in inter partes and ex parte proceedings. Certain amendments are being proposed to reduce the burden on the parties, to conform the rules to current practice, to update references that have changed, to reflect technologic changes, and to ensure the usage of standard, current terminology. The proposed rules will also further strategic objectives of the Office to increase the end-to-end electronic processing.

DATES: Comments must be received by June 3, 2016 to ensure consideration.

ADDRESSES: The Office prefers that comments be submitted via electronic mail message to *TTABFRNotices@uspto.gov.* Written comments also may be submitted by mail to Trademark Trial and Appeal Board, P.O. Box 1451, Alexandria, VA 22313–1451, attention Cheryl Butler; by hand delivery to the Trademark Assistance Center, Concourse Level, James Madison Building-East Wing, 600 Dulany Street, Alexandria, Virginia, attention Cheryl Butler; or by electronic mail message via the Federal eRulemaking Portal. *See* the Federal eRulemaking Portal Web site, *http://www.regulations.gov,* for additional instructions on providing comments via the Federal eRulemaking Portal. Written comments will be available for public inspection on the Office's Web site at *http://www.uspto.gov,* on the Federal eRulemaking Portal, and at the Trademark Assistance Center, Concourse Level, James Madison Building-East Wing, 600 Dulany Street, Alexandria, Virginia.

FOR FURTHER INFORMATION CONTACT: Cheryl Butler, Trademark Trial and Appeal Board, by email at *TTABFRNotices@uspto.gov,* or by telephone at (571) 272–4259.

SUPPLEMENTARY INFORMATION:

Executive Summary: Purpose: The proposed amendments to the rules emphasize the efficiency of electronic filing, which is already utilized by most parties in Board proceedings. In particular, it is proposed that all submissions will be filed through the Board's online filing system, the Electronic System for Trademark Trials and Appeals ("ESTTA") (available at *http://www.uspto.gov*), except in certain limited circumstances.

To simplify proceedings, the Office proposes to resume service requirements for notices of opposition, petitions for cancellation, and concurrent use proceedings, and proposes to require parties to serve all other submissions and papers by email. The proposed amended rules promote other efficiencies in proceedings, such as imposing discovery limitations, and allowing parties to take testimony by affidavit or declaration, with the option for oral cross-examination. It is being proposed that the proportionality requirement implemented in the 2015 amendments to the Federal Rules of Civil Procedure be expressly incorporated into the Board's proposed amended rules, which in-part adapt to recent changes to the Federal Rules of Civil Procedure, while taking into account the administrative nature of Board proceedings.

Other proposed amended rules address the Board's standard protective order and codify recent case law, including the submission of internet materials. Recognition of remote attendance at oral hearings is proposed to be codified, and new requirements for notification to the Office and the Board when review by way of civil action is taken are proposed in order to avoid premature termination of a Board proceeding. The proposed amendments also make minor changes to correct or update certain rules so that they clearly reflect current Board practice and terminology.

Costs and Benefits: This rulemaking is not economically significant under Executive Order 12866 (Sept. 30, 1993).

References below to "the Act," "the Trademark Act," or "the statute" refer to the Trademark Act of 1946, 15 U.S.C. 1051 *et seq.,* as amended. References to "TBMP" refer to the June 2015 edition of the Trademark Trial and Appeal Board Manual of Procedure.

Background

Reasons for Proposed Rule Changes

The last major set of rule changes at the Board took effect in 2007; the time is ripe for changes that will assist stakeholders in achieving more efficient practice before the Board. In the years since 2007, technology changes have allowed Board operations to move much closer toward the goal of realizing a fully integrated paperless filing and docketing system. In addition, many stakeholders have embraced use of the Board's Accelerated Case Resolution ("ACR") procedures, which has provided the Board with insight as to the effectiveness of the various procedures to which users of ACR have agreed, and which can be leveraged to benefit all parties involved in Board proceedings. The Federal Rules of Civil Procedure have changed in ways that are appropriate for codification into Board rules at this time, and the Board rules must be updated to reflect precedential decisions of the Board and the courts.

The revised rules would apply to every pending case and every new case commenced on or after the effective date of the rulemaking. Any issues that may arise concerning the transition to the revised rules for cases pending as of the effective date of the rules would be addressed by the Board and the parties on a case-by-case basis, allowing for flexibility to respond to the unique needs in each case, particularly with respect to scheduling matters.

Electronic Filing

The Board's electronic filing system, ESTTA, came online in 2002. Since that time electronic filings with the Board have steadily increased. Today well over 95 percent of filings are submitted via ESTTA. In addition, during this time, the Board has effectively communicated with parties through email for notices, orders, and decisions when the party has provided an email address, and since 2006, the Board institution order has included a link to the case file in TTABVUE, the Board's database of electronic case files. In view of this trend, and to further streamline proceedings, the proposed rules require that all filings be made through ESTTA and provide that the Board will send its notices, orders, and decisions via email. Eastern Time continues to control the timeliness of filing dates.

ESTTA already requires plaintiffs commencing a trial proceeding to select relevant grounds for opposition and cancellation, enhancing the accuracy of notice pleading, and under the proposed rules defendants would be required to inform the Board of any other related proceeding that serves as, or in essence could be viewed as, a counterclaim. In addition, under the proposed rules plaintiffs in a cancellation proceeding would have to include the name and address, including an email address, of any attorney reasonably believed by the plaintiff to be a possible representative of the owner in matters regarding the registration. Cancellation plaintiffs often are privy to such information and have traditionally provided it to the Board. The proposed rules codify this practice; the goal of this requirement is simply to assist in locating current owners of registrations, so that each cancellation case will involve the real parties in interest. To be clear, any attorney so identified is not considered counsel of record for the defendant until and unless either a power of attorney is filed or an appearance is made by the attorney in the proceeding.

The proposed rules codify that any notification of non-delivery of the Board's electronic notice of institution may also prompt additional notice of commencement of the case by publication in the USPTO Official Gazette. The Board would continue its practice of using other appropriate and available means to contact a party to ensure the real party in interest is notified of the proceeding. These changes recognize and embrace the shift by stakeholders from paper filing to electronic filing.

The Board would continue to accept paper filing of a notice of opposition or petition for cancellation in the rare circumstances when filing through ESTTA is not possible; however, parties attempting to commence a proceeding through a paper filing would have to concurrently file, to the attention of the Board, a petition to the Director with a showing that either ESTTA was unavailable due to technical problems or extraordinary circumstances are present. This procedure for paper filing would be required for all filings (*e.g.*, motions, testimony, and notices of reliance) with the Board.

In the event of more serious circumstances that could affect the Office's filing systems, such as the disruption of Office systems in December 2015, the Board will be flexible in making accommodation for such an event.

Service and Electronic Communication

In 2007, the USPTO amended the rules to require each plaintiff to serve the complaint on the defendant. This was a change from long-standing practice where the Board served the complaint on the defendant with the notice of institution. The proposed rules now shift the responsibility for serving the complaint back to the Board. However, in keeping with the progress toward complete use of electronic communication, the Board would not forward a paper copy of the complaint but rather would serve the complaint in the form of a link to TTABVUE in the notice of institution. In addition, recognizing that the correspondence address for a registered extension of protection under the Madrid Protocol, 15 U.S.C. 1141i, is the international registration holder's designated representative, the Board would forward the notice of institution to the registrant's designated representative.

Under the 2007 rules, parties are allowed (and encouraged) to stipulate to electronic service between the parties for all filings with the Board. Over the last few years, this has become the common practice, and the USPTO proposes to codify that practice by requiring service between parties by email for all filings with the Board and any other papers served on a party not required to be filed with the Board (*e.g.*, disclosures, discovery, etc.). The proposed rules nonetheless allow for parties to stipulate otherwise, to accommodate other methods of communication that may promote convenience and expediency (for example, a file hosting service that provides cloud storage, delivery of a USB drive, etc.). In addition, in the event service by email is not possible due to technical problems or extraordinary circumstances, and there is no stipulation to other methods, the party would have to include a statement with its submission or paper explaining why service by email was not possible, and the certificate of service would have to reflect the manner in which service was made. The statement is meant to assist the Board in ascertaining whether a repeating problem exists that may be alleviated with Board guidance. The statement is not intended to provide fertile ground for motion practice. In any event, methods of service of discovery requests and responses and document production remain subject to the parties' duty to cooperate under the Federal Rules of Civil Procedure and the Trademark Rules and are to be discussed during the settlement and discovery planning conference. Parties may avail themselves of Board participation in these conferences to ensure the most expeditious manner of service is achieved.

In view of service by email, the additional five days previously added to a prescribed period for response, to account for mail delays, would be removed. The response period for a motion would be initiated by its service date and would run for 20 days, except that the response period for summary judgment motions would remain 30 days. Similarly, no additional time would be available for the service of discovery responses.

Streamlining Discovery and Pretrial Procedure

The proposed rules adopt amendments to the Federal Rules of Civil Procedure by codifying the concept of "proportionality" in discovery. In addition, the proposed rules codify the ability of parties to stipulate to limit discovery by shortening the period, limiting requests, using reciprocal disclosures in lieu of discovery, or eliminating discovery altogether. To align further with the Federal Rules, the proposed rules explicitly include reference to electronically stored information ("ESI") and tangible things as subject matter for discovery. The Board continues to view the universe of ESI within the context of its narrower scope of jurisdiction, as compared to that of the federal district courts. The burden and expense of e-discovery will weigh heavily in any consideration. *See Frito-Lay North America Inc.* v. *Princeton Vanguard LLC*, 100 USPQ2d 1904, 1909 (TTAB 2011). The inclusion of ESI in the rule simply recognizes that many relevant documents are now kept in electronic form.

Under the proposed amendments, motions to compel initial disclosures must be filed within 30 days after the deadline for initial disclosures.

The proposed rules limit the number of requests for production of documents and requests for admissions to 75, the same as the current limitation on interrogatories, and remove the option to request additional interrogatories. In addition, the proposed rules allow for each party that has received produced documents to serve one comprehensive request for admission on the producing party, whereby the producing party would authenticate all produced documents or specify which documents cannot be authenticated. These proposed limitations on discovery simply recognize general practice and are meant to curtail abuse and restrain litigation expense for stakeholders. In view of the Board's narrow jurisdiction, the need to move for additional requests would be unlikely; however, the Office can revisit this issue based on comments from stakeholders.

Many commenced trial cases are quickly settled, withdrawn, or decided by default, and many others involve cooperative parties who engage in useful settlement and discovery planning conferences. For more contentious cases, involvement of a Board Interlocutory Attorney in the conference is encouraged, and the proposed rules codify the ability of the Interlocutory Attorneys to sua sponte participate in a discovery conference when they consider it useful. In addition, the circumstances under which telephone conferences with Interlocutory Attorneys can be sought by a party or initiated by the Interlocutory Attorney would be broadened to encompass any circumstances in which they "would be beneficial."

Under the proposed rule changes, discovery must be served early enough in the discovery period that responses will be provided and all discovery will be complete by the close of discovery. This includes production of documents, which would have to be produced or inspected by the close of discovery.

Under the proposed rules, discovery disputes would have to be resolved promptly following the close of discovery. The current deadline for filing motions to compel is merely prior to the commencement of the first trial period. Under the proposed revisions, however, motions to compel discovery or to determine the sufficiency of responses to requests for admissions must be filed prior to the deadline for the plaintiff's pretrial disclosures for the first testimony period. These revisions are intended to avoid the expense and uncertainty that arise when discovery disputes erupt on the eve of trial. These changes would also ensure that pretrial disclosures would be made and trial preparation would be engaged in only after all discovery issues have been resolved. In addition, the Board would be able to reset the pretrial disclosure deadline and testimony periods after resolving any motions relating to discovery and allowing time for compliance with any orders requiring additional responses or production.

Parties would also be subject to a requirement to inform adverse parties when prospective witnesses located outside the United States are expected to be present in the United States. This obligation would continue through discovery (as well as during trial if the witness could be called to testify), subject to the Board's determination of whether the party has been reasonable in meeting this obligation.

In 2007, the rules were amended to make the Board's standard protective order applicable in all proceedings, during disclosure, discovery, and trial, though parties have been able to agree to alternative orders, subject to Board approval. This has worked well, and the proposed rules clarify that the protective order is imposed in all inter partes proceedings. Parties would continue to have the flexibility to move forward under an alternative order by stipulation or motion approved by the Board. The proposed rules also codify practice and precedent that the Board may treat as not confidential material which cannot reasonably be considered confidential, notwithstanding party designations. *See Edwards Lifesciences Corp.* v. *VigiLanz Corp.*, 94 USPQ2d 1399, 1402–03 (TTAB 2010).

Since 2007, several types of consented motions for extensions and suspensions have been granted automatically by the Board's electronic filing system and the proposed rules codify this practice, while retaining the ability of Board personnel to require that certain conditions be met prior to approval. Thus, the practice by which some consented motions to extend or suspend are not automatically approved and would be reviewed and processed by a Board paralegal or attorney would continue. In addition, non-dispositive matters could be acted on by paralegals, and the proposed rules clarify that orders on motions under the designation, "By the Trademark Trial and Appeal Board," have the same legal effect as orders by a panel of three judges.

To clarify the obligations of the parties and render the status and timeline for a case more predictable, the proposed rules provide that a trial proceeding is suspended upon filing of a timely potentially-dispositive motion.

As with the timing of motions relating to discovery disputes that remain unresolved by the parties at the close of discovery, referenced above, motions for summary judgment also would have to be filed prior to the deadline for plaintiff's pretrial disclosures for the first testimony period. This would avoid disruption of trial planning and preparation through the filing, as late as on the eve of trial, of motions for summary judgment.

The existing rule for convening a pretrial conference because of the complexity of issues is proposed to be limited to exercise only by the Board, upon the Board's initiative.

Efficient Trial Procedures

For some time now parties have had the option to stipulate to ACR, which can be adopted in various forms. A common approach is for parties to stipulate that summary judgment cross motions will substitute for a trial record and traditional briefs at final hearing and the Board may resolve any issues of fact that otherwise might be considered subject to dispute. Other approaches adopted by parties utilizing the efficiencies of the ACR process have included agreements to limit discovery, agreements to shorten trial periods or the time between trial periods, stipulations to facts or to the admissibility of documents or other evidence, and stipulations to proffers of testimony by declaration or affidavit. These types of efficiencies would be codified by specifically providing for such stipulations and, most significantly, by allowing a unilateral option for trial testimony by affidavit or declaration subject to the right of oral cross examination by the adverse party or parties. Parties also would continue to be able to stipulate to rely on summary judgment materials as trial evidence.

The proposed rules would codify two changes in recent years, effected by case law and practice, expanding the option to submit certain documents by notice of reliance. First, the proposed rules codify existing law that pleaded registrations and registrations owned by any party may be made of record via notice of reliance by submitting therewith a current printout of information from the USPTO electronic database records showing current status and title. The rules currently allow for such printouts to be attached to the notice of opposition or petition for cancellation; the proposed change specifically also allows for such printouts to be submitted under notice of reliance. Second, the proposed rules codify that internet materials also may be submitted under a notice of reliance, as provided by *Safer, Inc.* v. *OMS Investments, Inc.*, 94 USPQ2d 1031 (TTAB 2010).

To alleviate any uncertainty, the proposed rules add a subsection to the requirements for a notice of reliance, specifically, to require that the notice indicate generally the relevance of the evidence and associate it with one or more issues in the proceeding. In an effort to curtail motion practice on this point, the proposed rule explicitly states any failure of a notice of reliance to meet this requirement would be considered a curable procedural defect. This codifies the holding of *FUJIFILM SonoSite, Inc.* v. *Sonoscape Co.*, 111 USPQ2d 1234, 1237 (TTAB 2014).

Under the proposed rule changes, a party must file any motion to use a discovery deposition at trial along with its pretrial disclosures. Also, an adverse party would be able to move to quash a notice of testimony deposition if the witness was not included in the pretrial disclosures, and an adverse party would be able to move to strike testimony presented by affidavit or declaration if the witness was not included in the pretrial disclosure.

Similar to the above-referenced proposal in regard to taking discovery from witnesses otherwise located outside the United States but who may be present in the United States during discovery, the proposed rules also provide that a party will have to inform adverse parties when it knows a prospective trial witness otherwise located outside the United States will be within the jurisdiction of the United States during trial.

In response to *Cold War Museum Inc.* v. *Cold War Air Museum Inc.,* 586 F.3d 1352, 92 USPQ2d 1626, 1629 (Fed. Cir. 2009), the proposed rules make clear that while the file history of the subject application or registration is of record, statements in affidavits or declarations in the file are not evidence.

The Board has seen an increase in testimony deposition transcripts that do not include a word index, and the proposed rules would require a word index for all testimony transcripts. For ease of review, deposition transcripts also would have to be submitted in full-sized format, not condensed with multiple pages per sheet. More broadly, the proposed rules would make clear that it is the parties' responsibility to ensure that all exhibits pertaining to an electronic submission must be clear and legible.

The proposed rules codify case law and Board practice under which the Board may sua sponte grant judgment for the defendant when the plaintiff has not submitted evidence, even where the plaintiff has responded to the Board's show cause order for failure to file a brief but has either not moved to reopen its trial period or not been successful in any such motion. *Gaylord Entertainment Co.* v. *Calvin Gilmore Productions. Inc.,* 59 USPQ2d 1369, 1372 (TTAB 2000).

To alleviate confusion and codify case law, the proposed rules clarify that evidentiary objections may be set out in a separate appendix that does not count against the page limit for a brief and that briefs exceeding the page limit may not be considered by the Board. *Alcatraz Media Inc.* v. *Chesapeake Marine Tours Inc.,* 107 USPQ2d 1750, 1753–54 (TTAB 2013) (Appropriate evidentiary objections may be raised in appendix or separate paper rather than in text of brief.), *aff'd,* 565 F. App'x 900 (Fed. Cir. 2013) (mem.).

Remand Procedures/Appeal Procedures

Certain aspects of ex parte appeals procedure are clarified in the proposed amendments. Under the proposed rules, evidence shall not be submitted after the filing of the notice of appeal and may only be added to the record when attached to a timely request for reconsideration or via a request for remand. This is not a change to the substance of the existing rule, but is designed to address a recurring error by applicants during ex parte appeal.

Reply briefs in ex parte appeals would be limited to 10 pages. To facilitate consideration and discussion of record evidence, citation to evidence in all the briefs for the appeal, by the applicant and examining attorney, would be to the documents in the electronic application record by docket entry date and page number.

The proposed rules provide that, if during an inter partes proceeding the examining attorney believes certain facts render an applied-for mark unregistrable, the examining attorney should formally request remand of the application to the Trademark Examining Operation rather than simply notify the Board.

Other Clarification of Board Practice and Codification of Case Law

Correlative to electronic filing and communication, the Board also has made it possible for parties, examining attorneys, and members of the Board to attend hearings remotely through video conference. The proposed rules codify that option.

In 2.106(a) and 2.114(a) the proposed rules codify case law and practice to make it clear that when no answer has been filed, all other deadlines are tolled. If the parties have continued to litigate after an answer is late-filed, it would generally be viewed as a waiver of the technical default.

The proposed rules provide that a Notice of Opposition to an application under Trademark Act § 66(a) must identify the goods and services opposed and the grounds for opposition on the ESTTA cover sheet and may not be amended to expand the opposition to cover goods or services beyond those referenced on the ESTTA cover sheet. These amendments codify the holding of *Hunt Control Systems Inc.* v. *Koninklijke Philips Electronics N.V.,* 98 USPQ2d 1558, 1561–62 (TTAB 2011). In addition, the rules would clarify that after the close of the time period for filing a Notice of Opposition, the notice may not be amended to add a joint opposer.

Requirements for filing appeals of Board decisions are restructured to align with the rules governing review of Patent Trial and Appeal Board decisions. Further, all notices of appeal to the United States Court of Appeals for the Federal Circuit must be filed with the USPTO's Office of General Counsel and a copy filed with the Board via ESTTA. When a party seeks review of a Board inter partes decision by commencing a civil action, the proposed amendments clarify that a notice of such commencement must be filed with the Board via ESTTA to avoid premature termination of the Board proceeding during pendency of the civil action. The proposed amendments further require that both a notice and a copy of the complaint for review of an ex parte decision by way of civil action are to be filed with the USPTO's Office of General Counsel with a copy to be filed with the Board via ESTTA.

Public Participation

The Board began 2015 looking ahead to the implementation of changes in the Federal Rules of Civil Procedure then scheduled to take effect in December 2015. The Board also looked back on its multi-year campaign to promote the use of Accelerated Case Resolution, to determine lessons learned, and to identify ways to leverage the benefits of ACR into all Board trial cases. For these and other reasons, it became clear that the timing was right to consider updating the Board's rules. On January 29, 2015, the Board held an ESTTA Users Forum, directed to issues and matters involving electronic filing. On February 19, 2015, the Board held a Stakeholder Roundtable concerning matters of practice and received comments and suggestions from various organizations representing intellectual property user groups, including inside counsel, outside counsel, and mark owners and applicants. That February roundtable involved discussion of many of the provisions that are now included in the proposed rule package. The Board also engaged in significant stakeholder outreach throughout 2015, alerting users in locations across the country about the issues that they could expect to be addressed in prospective rulemaking. Finally, the Board engaged the Trademark Public Advisory Committee on process and procedure changes under consideration, on multiple occasions during the year. All of these events have enriched the process through which the Board has developed proposed rule changes and served as a precursor to the continuing discussion with stakeholders that the Office seeks through this Notice of Proposed Rulemaking.

Discussion of Proposed Rules Changes

The Office proposes to make the following amendments:

Interferences and Concurrent Use Proceedings

Preliminary to Interference

The Office proposes to amend § 2.92 to incorporate a nomenclature change from "Examiner of Trademarks" to "examining attorney."

Adding Party to Interference

The Office proposes to amend § 2.98 to incorporate a nomenclature change from "examiner" to "examining attorney."

Application To Register as a Concurrent User

The Office proposes to amend § 2.99(c) and (d) to change "notification" to "notice of institution" or "notice," and to specify that the notice will be transmitted via email.

The Office proposes to revise § 2.99(d)(1) to remove the service requirement for applicants for concurrent use registration and to specify that the notice of institution will include a web link or web address for the concurrent use proceeding.

The Office proposes to amend § 2.99(d)(2) to clarify that an answer to the notice of institution is not required by an applicant or registrant whose application or registration is acknowledged in the concurrent use application.

The Office proposes to amend § 2.99(d)(3) to clarify that a user who does not file an answer when required is in default, but the burden of providing entitlement to registration(s) remains with the concurrent use applicant(s).

The Office proposes to amend § 2.99(f)(3) to incorporate a nomenclature change from "examiner" to "examining attorney."

Opposition

Filing an Opposition

The Office proposes to amend § 2.101(a) and (b) to remove the opposer's requirement to serve a copy of the notice of opposition on applicant.

The Office proposes to amend § 2.101(b)(1) to require that oppositions be filed through ESTTA. The proposed amendment continues the existing unconditional requirement that an opposition to an application based on Section 66(a) of the Trademark Act must be filed through ESTTA, but provides that an opposition against an application based on Section 1 or 44 of the Act may be filed in paper form in the event that ESTTA is unavailable due to technical problems or when extraordinary circumstances are present. The proposed amendment codifies the use of electronic filing.

The Office proposes to amend § 2.101(b)(2) to require that a paper opposition to an application must be accompanied by a Petition to the Director under § 2.146(a)(5), with the required fees and showing, and to add that timeliness of the submission will be determined in accordance with §§ 2.195 through 2.198.

The Office proposes to amend § 2.101(c) by moving the content of paragraph (d)(1) to the end of paragraph (c).

The Office proposes to amend § 2.101(d) by removing paragraphs (1), (3), and (4), but retaining the content in paragraph (d)(2) in an undesignated paragraph, and providing that an ESTTA opposition cannot be filed absent sufficient fees and a paper opposition accompanied by insufficient fees may not be instituted, but a potential opposer may resubmit the opposition with the required fee if time remains. The proposed revisions are intended to simplify the rules pertaining to insufficient fees.

The Office proposes to amend § 2.101(d)(4) to rename it as § 2.101(e) and clarify that the filing date of an opposition is the date of electronic receipt in the Office of the notice of opposition and required fee and to add that the filing date for a paper filing, where permitted, will be determined in accordance with §§ 2.195 through 2.198.

Extension of Time for Filing an Opposition

The Office proposes to amend § 2.102 to omit references to "written" requests for extensions of time, as it is unnecessary in view of the requirement in § 2.191 that all business be conducted in writing.

The Office proposes to amend § 2.102(a)(1) to require that requests to extend the time for filing an opposition be filed through ESTTA. The proposed amendment continues the existing requirement that an opposition to an application based on Section 66(a) of the Act must be filed through ESTTA, but provides that an opposition against an application based on Section 1 or 44 of the Act may be filed in paper form in the event that ESTTA is unavailable due to technical problems or when extraordinary circumstances are present. The Office proposes to amend § 2.102(a)(2) to require that a paper request to extend the opposition period must be accompanied by a Petition to the Director under § 2.146(a)(5), with the required fees and showing, and to add that timeliness of the paper submission will be determined in accordance with §§ 2.195 through 2.198.

The Office proposes to amend § 2.102(b) to clarify that an opposition filed during an extension of time must be in the name of the person to whom the extension was granted except in cases of misidentification through mistake or where there is privity.

The Office proposes to amend § 2.102(c)(1) to clarify that a sixty-day extension is not available as a first extension of time to oppose. The Office proposes to amend § 2.102(c)(3) to clarify that only a sixty-day time period is allowed for a final extension of the opposition period.

The Office proposes to add new § 2.102(d), which clarifies that the filing date of a request to extend the time for filing an opposition is the date of electronic receipt in the Office of the notice of opposition and that the filing date for a paper filing, where permitted, will be determined in accordance with §§ 2.195 through 2.198.

Contents of Opposition

The Office proposes to amend § 2.104(a) to specify that ESTTA requires the opposer to select relevant grounds for opposition, and the accompanying required statement supports and explains the grounds. The proposed amendment codifies current Office practice.

The Office proposes to add new § 2.104(c) to clarify that with respect to an opposition to an application filed under Section 66(a) of the Trademark Act, both the ESTTA cover sheet and accompanying statement must identify the goods and/or services opposed and the grounds for opposition and such an opposition may not be amended to include goods, services, or grounds beyond those set forth in the cover sheet. The proposed amendment conforms with Section 68(c)(3) of the Act, is consistent with the proposed amendment to § 2.107(b), and codifies current case law and practice.

Notification to Parties of Opposition Proceeding(s)

The Office proposes to amend § 2.105(a) to remove the service requirement for opposers and to specify that the notice of institution constitutes service and will include a web link or web address to access the electronic proceeding record.

The Office proposes to amend §§ 2.105(b) and (c) to provide that it will effect service of the notice of opposition at the email or correspondence address of record for the parties, their attorneys, or their domestic representatives.

Answer

The Office proposes to amend § 2.106(a) to add that default may occur after the time to answer is reset and that failure to file a timely answer tolls all deadlines until the issue of default is resolved. The proposed amendment codifies current Office practice and is consistent with the Office's proposed amendment to § 2.114(a).

The Office proposes to amend § 2.106(b)(1) to specify that a reply to an affirmative defense shall not be filed.

The Office proposes to amend § 2.106(b)(2)(i) to add a requirement that an applicant subject to an opposition proceeding must promptly inform the Board of the filing of another proceeding between the same parties or anyone in privity therewith.

The Office proposes to amend § 2.106(b)(2)(iv) to clarify that the Board may sua sponte reset the times for pleading, discovery, testimony, briefs, or oral argument.

Amendment of Pleadings in an Opposition Proceeding

The Office proposes to amend § 2.107(a) to add that an opposition proceeding may not be amended to add a joint opposer.

The Office proposes to amend § 2.107(b) to clarify that, with respect to an opposition to an application filed under Section 66(a) of the Trademark Act, pleadings may not be amended to add grounds for opposition or goods or services beyond those set forth in the cover sheet, or to add a joint opposer. The proposed amendment conforms with Section 68(c)(3) of the Act, is consistent with the proposed amendment to § 2.104(c), and codifies current case law and practice.

Cancellation

Filing a Petition for Cancellation

The Office proposes to amend § 2.111(a) and (b) to remove the petitioner's requirement to serve a copy of the petition to cancel on registrant.

The Office proposes to amend § 2.111(c)(1) to require that a petition to cancel a registration be filed through ESTTA. The proposed amendment provides that a petition to cancel may be filed in paper form in the event that ESTTA is unavailable due to technical problems or when extraordinary circumstances are present. The Office proposes to amend § 2.111(c)(2) to require that a paper petition to cancel a registration must be accompanied by a Petition to the Director under § 2.146(a)(5), with the required fees and showing, and to add that timeliness of the submission, if relevant to a ground asserted in the petition to cancel, will be determined in accordance with §§ 2.195 through 2.198. The proposed amendments codify the use of electronic filing.

The Office proposes to delete § 2.111(c)(3) and add a new § 2.111(d), which provides that a petition for cancellation cannot be filed via ESTTA absent sufficient fees and a paper petition accompanied by insufficient fees may not be instituted. The proposed revisions are intended to simplify the rules pertaining to insufficient fees.

The Office proposes to amend § 2.111(c)(4) to renumber it as § 2.111(e), which clarifies that the filing date of a petition for cancellation is the date of electronic receipt in the Office of the petition and required fee and adds that the filing date for a paper petition for cancellation, where permitted, is the date identified in § 2.198.

Contents of Petition for Cancellation

The Office proposes to amend § 2.112(a) to add that the petition for cancellation must indicate, to the best of petitioner's knowledge, a current email address(es) of the current owner of the registration and of any attorney, as specified in §§ 11.14(a) and (c) of this Chapter, reasonably believed by the petitioner to be a possible representative of the owner in matters regarding the registration.

The Office proposes to further amend § 2.112(a) to specify that ESTTA requires the petitioner to select relevant grounds for cancellation, and the required accompanying statement supports and explains the grounds. The proposed amendment codifies current Office practice.

Notification of Cancellation Proceeding

The Office proposes to amend § 2.113(a) to remove the service requirement for petitioners and to specify that the notice of institution constitutes service and will include a web link or web address to access the electronic proceeding record.

The Office proposes to amend §§ 2.113(b) and (c) to provide that it will effect service of the petition for cancellation at the email or correspondence address of record for the parties, their attorneys, or their domestic representatives. The Office further proposes to amend § 2.113(c) to insert subheadings (1), (2), and (3) for clarity and to provide in newly designated paragraph (3) that, in the case of a registration issued under 15 U.S.C. 1141(i), notice will be sent to the international registration holder's designated representative and constitutes service.

The Office proposes to amend § 2.113(d) to remove "petition for cancellation" and to provide that the courtesy copy of the notice of institution that shall be forwarded to the alleged current owner of the registration will include a web link or web address to access the electronic proceeding record.

Answer

The Office proposes to amend § 2.114(a) to add that default may occur after the time to answer is reset and that failure to file a timely answer tolls all deadlines until the issue of default is resolved. The proposed revision codifies current Office practice and is consistent with the Office's proposed amendment to § 2.106(a).

The Office proposes to amend § 2.114(b)(1) to add that a pleaded registration is a registration identified by number by the party in the position of plaintiff in an original or counterclaim petition for cancellation.

The Office proposes to amend § 2.114(b)(2)(i) to add a requirement that a party in the position of respondent and counterclaim plaintiff must promptly inform the Board of the filing of another proceeding between the same parties or anyone in privity therewith.

The Office proposes to amend § 2.114(b)(2)(iii) to clarify that the Board may sua sponte reset the period for filing an answer to a counterclaim. The Office proposes to amend § 2.114(b)(2)(iv) to clarify that the Board may sua sponte reset the times for pleading, discovery, testimony, briefs, or oral argument.

The Office proposes to amend § 2.114(c) to add that counterclaim petitions for cancellation may be withdrawn without prejudice before an answer is filed.

Procedure in Inter Partes Proceedings

Federal Rules of Civil Procedure

The Office proposes to amend § 2.116(e) to add that the submission of notices of reliance, declarations, and affidavits, as well as the taking of depositions, during the testimony period corresponds to the trial in court proceedings. The proposed revision codifies current Office practice and is consistent with proposed amendments relating to declarations and affidavits.

The Office proposes to amend § 2.116(g) to clarify that the Board's standard protective order, which is available on the Office's Web site, is automatically imposed throughout all inter partes proceedings. The Office proposes to further amend § 2.116(g) to add that the Board may treat as not confidential material which cannot reasonably be considered confidential, notwithstanding a party's designation. The proposed revisions codify current case law and Office practice.

Suspension of Proceedings

The Office proposes to amend § 2.117(c) to clarify that the Board may suspend proceedings sua sponte and retains discretion to condition approval of consented or stipulated motions to suspend on the provision by parties of necessary information about the status of settlement talks or discovery or trial activities.

Undelivered Office Notices

The Office proposes to amend § 2.118 to add notification of non-delivery in paper or electronic form of Board notices and to delete the time period prescribed by the Director.

Service and Signing

The Office proposes to incorporate the word "submissions" throughout § 2.119 to codify the use of electronic filing. The proposed amendment codifies the use of electronic filing.

The Office proposes to amend § 2.119(a) to remove the service requirements for notices of opposition and petitions to cancel, consistent with proposed amendments to §§ 2.101(a) and (b) and 2.111(a) and (b).

The Office proposes to amend § 2.119(b) to require that all submissions filed with the Board and any other papers served on a party be served by email, unless otherwise stipulated or service by email cannot be made due to technical problems or extraordinary circumstances.

The Office proposes to amend § 2.119(b)(3) to revise the manner of service on a person's residence by stating that a copy of a submission may be left with some person of suitable age and discretion who resides there. The proposed amendment is consistent with both the Patent Rules of Practice and the Federal Rules of Civil Procedure.

The Office proposes to amend § 2.119(b)(6) to remove the requirement for mutual agreement by the parties for service by other forms of electronic transmission and to remove service by notice published in the *Official Gazette*.

The Office proposes to amend § 2.119(c) to remove the provision adding five days to the prescribed period for action after service by the postal service or overnight courier. All fifteen-day response dates initiated by a service date would be amended to twenty days.

The Office proposes to amend § 2.119(d) to add that no party may serve submissions by means of the postal service if a party to an inter partes proceeding is not domiciled in the United States and is not represented by an attorney or other authorized representative located in the United States.

Discovery

The Office proposes to amend § 2.120(a)(1) to add the concept of proportionality in discovery, in conformance with the 2015 amendments to the Federal Rules of Civil Procedure, and to reorganize portions of the text for clarity.

The Office proposes to amend § 2.120(a)(2) to add headings for subparts (i) through (v) and to reorganize portions of the text for clarity.

The Office proposes to amend renumbered § 2.120(a)(2)(i) to specify that a Board Interlocutory Attorney or Administrative Trademark Judge will participate in a discovery conference when the Board deems it useful. The proposed revision codifies current Office practice.

The Office proposes to amend renumbered § 2.120(a)(2)(iii) to add that the Board may issue an order regarding expert discovery either on its own initiative or on notice from a party of the disclosure of expert testimony.

The Office proposes to amend renumbered § 2.120(a)(2)(iv) to add that parties may stipulate that there will be no discovery, that the number of discovery requests or depositions be limited, or that reciprocal disclosures be used in place of discovery. The proposed amendment codifies some of the stipulations successfully used by parties in ACR procedures and other proceedings incorporating ACR-type efficiencies. The Office proposes to further amend § 2.120(a)(2)(iv) to clarify that extensions of the discovery period granted by the Board will be limited. The Office proposes to further amend § 2.120(a)(2)(iv) to require that an expert disclosure deadline must always be scheduled prior to the close of discovery.

The Office proposes to amend § 2.120(a)(3) to require that discovery requests be served early enough in the discovery period that responses will be due no later than the close of discovery, and when the time to respond is extended, discovery responses may not be due later than the close of discovery. The proposed amendment is intended to alleviate motion practice prompted by responses to discovery requests served after discovery has closed.

The Office proposes to amend § 2.120(b) to require that any agreement by the parties as to the location of a discovery deposition shall be made in writing.

The Office proposes to amend the title of § 2.120(c) to clarify that it applies to foreign parties within the jurisdiction of the United States. The Office proposes to amend § 2.120(c)(2) to require that a party must inform every adverse party whenever a foreign party has or will have, during a time set for discovery, an officer, director, managing agent, or other person who consents to testify on its behalf present within the United States.

The Office proposes to amend § 2.120(d) to remove motions for leave to serve additional interrogatories. The Office proposes to revise § 2.120(d) such that it addresses only interrogatories, deleting subsections (1) and (2). Provisions relating to requests for production are moved to revised § 2.120(e), and §§ 2.120(f) through (k) are renumbered in conformance.

The Office proposes to amend § 2.120(e) to limit the total number of requests for production to seventy-five and to provide a mechanism for objecting to requests exceeding the limitation parallel to § 2.120(d). The Office proposes to further amend § 2.120(e) to clarify that the rule applies to electronically stored information as well as documents and tangible things; to provide that the time, place, and manner for production shall comport with the provisions of Rule 34 of the Federal Rules of Civil Procedure, or be made pursuant to agreement of the parties; and to delete that production will be made at the place where the documents and things are usually kept.

The Office proposes to amend renumbered § 2.120(f)(1) to clarify that the rule applies to electronically stored information as well as documents and tangible things. The Office proposes to further amend § 2.120(f)(1) to require that a motion to compel initial disclosures must be filed within thirty days after the deadline therefor and include a copy of the disclosures. The Office proposes to further amend § 2.120(f)(1) to require that a motion to compel discovery must be filed prior to the deadline for pretrial disclosures for the first testimony period, rather than the commencement of that period. The Office proposes to further amend § 2.120(f)(1) to clarify that the request for designation pertains to a witness. The Office proposes to further amend § 2.120(f)(1) to require a showing from the moving party that the party has made a good faith effort to resolve the issues presented in the motion.

The Office proposes to amend renumbered § 2.120(f)(2) to clarify that when a motion to compel is filed after the close of discovery, the parties need not make pretrial disclosures until directed to do so by the Board.

The Office proposes to amend renumbered § 2.120(g) to conform to Federal Rule of Civil Procedure 26(c).

The Office proposes to amend renumbered § 2.120(i) to limit the total number of requests for admission to seventy-five and to provide a mechanism for objecting to requests exceeding the limitation parallel to §§ 2.120(d) and (e). The Office proposes to further amend § 2.120(i) to permit a party to make one comprehensive request for an admission authenticating documents produced by an adverse party.

The Office proposes to amend renumbered § 2.120(i)(1) to require that any motion to test the sufficiency of any objection, including a general objection on the ground of excessive number, must be filed prior to the deadline for pretrial disclosures for the first testimony period, rather than the commencement of that period. The Office proposes to further amend § 2.120(i)(1) to require a showing from the moving party that the party has made a good faith effort to resolve the issues presented in the motion.

The Office proposes to amend renumbered § 2.120(i)(2) to clarify that when a motion to determine the sufficiency of an answer or objection to a request for admission is filed after the close of discovery, the parties need not make pretrial disclosures until directed to do so by the Board.

The Office proposes to amend renumbered § 2.120(j)(1) to state more generally that the Board may schedule a telephone conference whenever it appears that a stipulation or motion is of such nature that a telephone conference would be beneficial. The Office proposes to amend § 2.120(j)(2) to remove provisions allowing parties to move for an in-person meeting with the Board during the interlocutory phase of an inter partes proceeding and the requirement that any such meeting directed by the Board be at its offices. The Board proposes to add new § 2.120(j)(3) to codify existing practice that parties may not make a recording of the conferences referenced in §§ 2.120(j)(1) and (2).

The Office proposes to amend renumbered § 2.120(k)(2) to change the time for a motion to use a discovery deposition to when the offering party makes its pretrial disclosures and to clarify that the exceptional circumstances standard applies when this deadline has passed.

The Office proposes to amend renumbered § 2.120(k)(3)(i) to clarify that the disclosures referenced are initial disclosures, to remove the exclusion of disclosed documents, and to incorporate a reference to new § 2.122(g).

The Office proposes to amend renumbered § 2.120(k)(3)(ii) to add that a party may make documents produced by another party of record by notice of reliance alone if the party has obtained an admission or stipulation from the producing party that authenticates the documents. This amendment is consistent with the proposed amendment in renumbered § 2.120(i) permitting a party to make one comprehensive request for an admission authenticating documents produced by an adverse party.

The Office proposes to amend renumbered § 2.120(k)(7) to add an authenticated produced document to the list of evidence that may be referred to by any party when it has been made of record.

Assignment of Times for Taking Testimony and Presenting Evidence

The Office proposes to amend § 2.121(a) to clarify that evidence must be presented during a party's testimony period. The Office proposes to further amend § 2.121(a) to add that the resetting of a party's testimony period will result in the rescheduling of the remaining pretrial disclosure deadlines without action by any party. These amendments codify current Office practice.

The Office proposes to amend § 2.121(c) to add that testimony periods may be shortened by stipulation of the parties approved by the Board or may be extended on motion granted by the Board or order of the Board. The Office proposes to further amend § 2.121(c) to add that the pretrial disclosure deadlines associated with testimony periods may remain as set if a motion for an extension is denied. These amendments codify current Office practice.

The Office proposes to amend § 2.121(d) to add that stipulations to reschedule the deadlines for the closing date of discovery, pretrial disclosures, and testimony periods must be submitted through ESTTA with the relevant dates set forth and an express statement that all parties agree to the new dates. The proposed amendment codifies the use of electronic filing.

The Office proposes to amend § 2.121(e) to add that the testimony of a witness may be either taken on oral examination and transcribed or presented in the form of an affidavit or declaration, as provided in proposed amendments to § 2.123.

The Office proposes to further amend § 2.121(e) to add that a party may move to quash a noticed testimony deposition of a witness not identified or improperly identified in pretrial disclosures before the deposition. The proposed amendment codifies current Office practice.

The Office proposes to further amend § 2.121(e) to add that when testimony has been presented by affidavit or declaration, but was not covered by an earlier pretrial disclosure, the remedy for any adverse party is the prompt filing of a motion to strike, as provided in §§ 2.123 and 2.124. The proposed amendment aligns the remedy for undisclosed testimony by affidavit or declaration with the remedy for undisclosed deposition testimony.

Matters in Evidence

The Office proposes to amend § 2.122(a) to clarify the title of the subsection and to specify that parties may stipulate to rules of evidence for proceedings before the Board. The Office proposes to further amend § 2.122(a), consistent with § 2.120(k)(7), to add that when evidence has been made of record by one party in accordance with these rules, it may be referred to by any party for any purpose permitted by the Federal Rules of Evidence. The proposed amendments codify current Office practice.

The Office proposes to amend § 2.122(b)(2) to clarify the title of the subsection and to clarify that statements made in an affidavit or declaration in the file of an application for registration or in the file of a registration are not evidence on behalf of the applicant or registrant and must be established by competent evidence.

The Office proposes to amend § 2.122(d)(2) to add a cross-reference to new § 2.122(g) and to specify that a registration owned by a party may be made of record via notice of reliance accompanied by a current printout of information from the electronic database records of the Office showing the current status and title of the registration. The proposed amendment codifies current case law and Office practice.

The Office proposes to amend § 2.122(e) to designate a new paragraph (e)(1), clarify that printed publications must be relevant to a particular proceeding, and add a cross-reference to new § 2.122(g).

The Office proposes to add new § 2.122(e)(2) permitting admission of internet materials into evidence by notice of reliance and providing requirements for their identification. The proposed amendment codifies current case law and Office practice.

The Office proposes to add new § 2.122(g) detailing the requirements for admission of evidence by notice of reliance. Section 2.122(g) provides that a notice must indicate generally the relevance of the evidence offered and associate it with one or more issues in the proceeding, but failure to do so with sufficient specificity is a procedural defect that can be cured by the offering party within the time set by Board order. The proposed amendment codifies current case law and Office practice.

Trial Testimony in Inter Partes Cases

The Office proposes to amend § 2.123(a)(1) to permit submission of witness testimony by affidavit or declaration, subject to the right of any adverse party to take and bear the expense of oral cross-examination of that witness, as provided in proposed amendments to § 2.121(e), and to add that the offering party must make that witness available. The proposed amendment is intended to promote efficient trial procedure.

The Office proposes to further amend § 2.123(a)(1) to move to § 2.123(a)(2) a provision permitting a motion for deposition on oral examination of a witness in the United States whose testimonial deposition on written questions has been noticed.

The Office proposes to further amend § 2.123(a)(2) to add that the party which has proffered a witness for testimonial deposition on written questions must inform every adverse party when it knows that such witness will be within the jurisdiction of the United States during such party's testimony period. The proposed amendment is consistent with the proposed amendment to § 2.120(c)(2) and is intended to promote efficient trial procedure by facilitating the use of deposition on oral examination instead of written questions when permissible.

The Office proposes to amend § 2.123(b) to remove the requirement for written agreement of the parties to submit testimony in the form of an affidavit, as provided in proposed amendments to § 2.123(a)(1), and to clarify that parties may stipulate to any relevant facts.

The Office proposes to amend § 2.123(c) to remove the option of identifying a witness by description in a notice of examination and to clarify that such notice shall be given to adverse parties before oral depositions.

The Office proposes to further amend § 2.123(c) to add that, when a party elects to take oral cross-examination of an affiant or declarant, the notice of such election must be served on the adverse party and a copy filed with the Board within 10 days from the date of service of the affidavit or declaration and completed within 20 days from the date of service of the notice of election.

The Office proposes to further amend § 2.123(c) to add that the Board may extend the periods for electing and taking oral cross-examination and, when necessary, shall suspend or reschedule proceedings in the matter to allow for the orderly completion of the oral cross-examination(s) that cannot be completed within a testimony period.

The Office proposes to amend § 2.123(e)(1) to specify that a witness must be sworn before providing oral testimony. The Office proposes to further amend § 2.123(e)(1) to move from § 2.123(e)(3) the provision that cross-examination is available on oral depositions. The Office proposes to further amend § 2.123(e)(1) to add that, where testimony is proffered by affidavit or declaration, cross-examination is available for any witness within the jurisdiction of the United States, as provided in proposed amendments to § 2.123(a)(1).

The Office proposes to amend § 2.123(e)(2) to remove provisions permitting depositions to be taken in longhand, by typewriting, or stenographically and to specify that testimony depositions shall be recorded.

The Office proposes to amend § 2.123(e)(3) to delete the provision that cross-examination is available on oral depositions, which the Office proposes to move to § 2.123(e)(1), and to insert subheadings (i) and (ii) for clarity.

The Office proposes to amend § 2.123(e)(4) to specify that the rule regarding objections pertains to oral examination.

The Office proposes to amend § 2.123(e)(5) to clarify that the rule regarding witness signature relates to the transcript of an oral deposition.

The Office proposes to amend § 2.123(f)(2) to require that deposition transcripts and exhibits shall be filed in electronic form using ESTTA. If the weight or bulk of an exhibit prevents its uploading to ESTTA, it shall be transmitted in a separate package, including an explanation as to why it could not be submitted electronically. The proposed amendment codifies the use of electronic filing.

The Office proposes to amend § 2.123(g)(1) to add that deposition transcripts must be submitted in full-sized format (one page per sheet), not condensed (multiple pages per sheet). The Office proposes to amend § 2.123(g)(3) to add that deposition transcripts must contain a word index, giving the pages where the words appear in the deposition.

The Office proposes to remove § 2.123(i), which permits inspection by parties and printing by the Office of depositions after they are filed in the Office. Subsections 2.123(j) through (l) are renumbered §§ 2.123(i) through (k) in conformance.

The Office proposes to amend renumbered § 2.123(j) to add that objection may be made to receiving in evidence any declaration or affidavit. The Office proposes to further amend renumbered § 2.123(j) to provide that objections may not be considered until final hearing.

Depositions Upon Written Questions

The Office proposes to add new § 2.124(b)(3) to provide that a party desiring to take cross-examination by written questions of a witness who has provided testimony by affidavit or declaration shall serve notice on each adverse party and file a copy of the notice with the Board.

The Office proposes to amend § 2.124(d)(1) to clarify that the procedures for examination on written questions apply to both direct testimony and cross-examination. The Office proposes to further amend § 2.124(d)(1) to specify procedure for cross-examination by written questions of a witness who has provided testimony by affidavit or declaration.

The Office proposes to add new § 2.124(d)(3) to provide that service of written questions, responses, and cross-examination questions shall be in accordance with § 2.119(b).

Filing and Service of Testimony

The Office proposes to amend § 2.125 to renumber paragraphs (a) through (e) to (b) through (f) and to add new § 2.125(a) to require that one copy of a declaration or affidavit prepared in accordance with § 2.123, with exhibits, shall be served on each adverse party at the time the declaration or affidavit is submitted to the Board during the assigned testimony period.

The Office proposes to amend renumbered § 2.125(b) to add a cross-reference to § 2.124 and to clarify that the subsection applies to testimony depositions, including depositions on written questions.

The Office proposes to amend renumbered § 2.125(f) to permit sealing of a part of an affidavit or declaration.

Form of Submissions to the Trademark Trial and Appeal Board

The Office proposes to amend § 2.126 to renumber paragraph (a) to (b) and to add new paragraph (a) to require that submissions to the Board shall be made via ESTTA. The proposed amendment codifies the use of electronic filing.

The Office proposes to add new § 2.126(a)(1) to require that text in an electronic submission must be filed in at least 12-point type and double-spaced. The proposed amendment is consistent with the proposed amendment to § 2.126(b)(1).

The Office proposes to add new § 2.126(a)(2) to require that exhibits pertaining to an electronic submission must be made electronically as an attachment to the submission and must be clear and legible. The proposed amendment codifies the use of electronic filing.

The Office proposes to amend renumbered § 2.126(b) to permit submissions in paper form in the event that ESTTA is unavailable due to technical problems or when extraordinary circumstances are present. The Office proposes to further amend renumbered § 2.126(b) to require that submissions in paper form must be accompanied by a Petition to the Director under § 2.146(a)(5), with the required fees and showing.

The Office proposes to amend renumbered § 2.126(b)(1) to require that text in a paper submission must be filed in at least 12-point type. The proposed amendment is consistent with the proposed amendment to § 2.126(a)(1).

The Office proposes to remove the subsection previously designated § 2.126(b).

The Office proposes to amend § 2.126(c) to provide that submissions to the Board that are confidential in whole or part must be submitted using the "Confidential" selection available in ESTTA or, where appropriate, under a separate paper cover. The Office proposes to further amend § 2.126(c) to clarify that a redacted copy must be submitted concurrently for public viewing.

Motions

The Office proposes to amend § 2.127(a) to reflect that all response dates initiated by a service date are twenty days. The Office proposes to further amend § 2.127(a) to add that the time for filing a reply brief will not be reopened.

The Office proposes to amend § 2.127(b) to reflect that all response dates initiated by a service date are twenty days.

The Office proposes to amend § 2.127(c) to add that conceded matters and other matters not dispositive of a proceeding may be acted on by a Paralegal of the Board or by ESTTA and that motions disposed of by orders entitled "By the Trademark Trial and Appeal Board" have the same legal effect as orders by a panel of three Administrative Trademark Judges of the Board. The proposed amendments codify current Office practice.

The Office proposes to amend § 2.127(d) to clarify that a case is suspended when a party timely files any potentially dispositive motion.

The Office proposes to amend § 2.127(e)(1) to require that a motion for summary judgment must be filed prior to the deadline for pretrial disclosures for the first testimony period, rather than the commencement of that period. The Office proposes to further amend § 2.127(e)(1) to change references to Rule 56(f) to 56(d) in conformance with amendments to the Federal Rules of Civil Procedure. The Office proposes to further amend § 2.127(e)(1) to reflect that the reply in support of a motion for summary judgment is due twenty days after service of the response. The Office proposes to further amend § 2.127(e)(1) to add that the time for filing a motion under Rule 56(d) and a reply brief will not be reopened.

The Office proposes to amend § 2.127(e)(2) to add that if a motion for summary judgment is denied, the parties may stipulate that the materials submitted with briefs on the motion shall be considered at trial as trial evidence, which may be supplemented by additional evidence during trial. The proposed revision codifies an approach used by parties in proceedings incorporating ACR-type efficiencies at trial.

Briefs at Final Hearing

The Office proposes to amend § 2.128(a)(3) to add that, when the Board issues a show cause order for failure to file a brief and there is no evidence of record, if the party responds to the order showing good cause why judgment should not be entered based on loss of interest but does not move to reopen its testimony period based on demonstrable excusable neglect, judgment may be entered against the plaintiff for failure to take testimony or submit evidence. The proposed amendment codifies current case law and practice and is consistent with TBMP § 536 (2015).

The Office proposes to amend § 2.128(b) to add that evidentiary objections may be set out in a separate appendix that does not count against the briefing page limit. The proposed amendment codifies current case law and practice and is consistent with TBMP § 801.03. The Office proposes to further amend § 2.128(b) to add that briefs exceeding the page limits may not be considered by the Board, and this also codifies existing practice.

Oral Argument; Reconsideration

The Office proposes to amend § 2.129(a) to clarify that all statutory members of the Board may hear oral argument. The Office proposes to further amend § 2.129(a) to add that parties and members of the Board may attend oral argument in person or, at the discretion of the Board, remotely. The proposed amendment codifies current Office practices and is consistent with the Office's proposed amendments to § 2.142(e)(1).

The Office proposes to amend § 2.129(b) to add that the Board may deny a request to reset a hearing date for lack of good cause or if multiple requests for rescheduling have been filed.

The Office proposes to amend § 2.129(c) to reflect that all response dates initiated by a service date are twenty days.

New Matter Suggested by the Trademark Examining Attorney

The Office proposes to amend § 2.130 to add that if during an inter partes proceeding involving an application the examining attorney believes certain facts render the mark unregistrable the examining attorney should formally request remand of the application rather than simply notify the Board.

Involuntary Dismissal for Failure To Take Testimony

The Office proposes to amend § 2.132(a) to clarify that, if a plaintiff has not submitted evidence and its time for taking testimony has expired, the Board may grant judgment for the defendant sua sponte. The Office proposes to further amend § 2.132(a) to reflect that all response dates initiated by a service date are twenty days. The Office proposes to amend further § 2.132(a) to clarify the standard for the showing required not to render judgment dismissing the case is excusable neglect.

The Office proposes to amend § 2.132(b) to limit evidence to Office records showing the current status and title of a plaintiff's pleaded registrations. The Office proposes to further amend § 2.132(b) to reflect that all response dates initiated by a service date are twenty days. The Office proposes to further amend § 2.132(b) to clarify that the Board may decline to render judgment on a motion to dismiss until all testimony periods have passed.

Surrender or Voluntary Cancellation of Registration

The Office proposes to amend § 2.134(b) to clarify that the subsection is applicable to extensions of protection in accordance with the Madrid Protocol.

Status of Application on Termination of Proceeding

The Office proposes to amend § 2.136 to specify when a proceeding will be terminated by the Board and the status of an application on termination of an opposition or concurrent use proceeding.

Appeals

Time and Manner of Ex Parte Appeals

The Office proposes to amend § 2.142 to incorporate a nomenclature change from "examiner" to "examining attorney."

The Office proposes to amend § 2.142(b)(2) to add that a reply brief from an appellant shall not exceed ten pages in length and that no further briefs are permitted unless authorized by the Board.

The Office proposes to add new § 2.142(b)(3) to specify that citation to evidence in briefs should be to the documents in the electronic application record by date, the name of the paper under which the evidence was submitted, and the page number in the electronic record. The proposed amendment is intended to facilitate review of record evidence by the applicant, the examining attorney, the Board, and the public.

The Office proposes to amend § 2.142(c) to add that the statement of issues in a brief should note that the applicant has complied with all requirements made by the examining attorney and not the subject of appeal.

The Office proposes to amend § 2.142(d) to clarify that evidence shall not be submitted after a notice of appeal is filed. The proposed amendment more directly states the existing rule. The Office proposes to further amend § 2.142(d) for clarity, including by specifying that an appellant or examining attorney who desires to introduce additional evidence after an appeal is filed must submit a request to the Board to suspend the appeal and remand the application for further examination.

The Office proposes to amend § 2.142(e)(1) to clarify that all statutory members of the Board may hear oral argument. The Office proposes to further amend § 2.142(e)(1) to add that appellants, examining attorneys, and members of the Board may attend oral argument in person or, at the discretion of the Board, remotely. The proposed amendment codifies current Office practice and is consistent with the Office's proposed amendments to § 2.129(a).

The Office proposes to amend § 2.142(e)(2) to add that a supervisory or managing attorney may designate an examining attorney to present oral argument and to delete the provision that the examining attorney designated must be from the same examining division.

The Office proposes to amend § 2.142(f)(1) to change the time for further examination of an application on remand from thirty days to the time set by the Board.

Appeal to Court and Civil Action

The Office proposes to amend § 2.145 by reorganizing the subjects covered and rewording some provisions to improve the clarity and structure of the rule and to align the provisions with the analogous rules governing judicial review of Patent Trial and Appeal Board decisions in 37 CFR part 90.

From a restructuring standpoint, certain proposed amendments result in existing provisions being moved to a different subsection of the rule. Specifically, provisions regarding appeals to the U.S. Court of Appeals for the Federal Circuit, which currently appear in subparts (a) and (b), are proposed to be grouped together under subpart (a). Provisions regarding the process provided for in Section 21(a)(1) of the Act, whereby an adverse party to a Federal Circuit appeal of an inter partes Board decision may file notice of its election to have proceedings conducted by way of a civil action, are proposed to be moved from subpart (c), which concerns civil actions, to revised subpart (b), with the subheading "For a notice of election under section 21(a)(1) to proceed under section 21(b) of the Act."

Substantively, throughout § 2.145, the Office proposes to remove specific references to times for taking action or other requirements that are specified in the Act or another set of rules (*e.g.*, Federal Rules of Appellate Procedure) and replace them with references to the applicable section of the Act or rules that set the time or requirements for the specified action. These changes will help ensure that parties consult the applicable statute or rule itself and avoid the need for the USPTO to amend its regulations if the applicable provision of the statute or rule changes.

The Office also proposes to amend the provisions in § 2.145 that require copies of notices of appeal, notices of election, and notices of civil action to be filed with the Trademark Trial and Appeal Board to specify that such notices must be filed with the Board via ESTTA. These proposed amendments codify the use of electronic filing and enhance the Office's ability to handle properly applications, registrations, and proceedings while on review in federal court.

Regarding amendments to the requirements for appeals to the Federal Circuit, the Office proposes to amend § 2.145(a) to add subsections (1)–(3). The Office proposes to move the language currently in § 2.145 (a) to new (a)(1) and to amend it, in accordance with Section 21(a) of the Act, to include that a registrant who has filed an affidavit or declaration under Section 71 of the Trademark Act and is dissatisfied with the decision of the Director may appeal. The Office proposes to further amend § 2.145(a)(1) to add that it is unnecessary to request reconsideration before filing an appeal of a Board decision, but a party requesting reconsideration must do so before filing a notice of appeal. Proposed §§ 2.145(a)(2) and (3) specify the requirements contained in current §§ 2.145(a) and (b) for filing an appeal to the Federal Circuit.

Regarding amendments to the requirements for filing a civil action in district court in § 2.145(c), the Office proposes to add in § 2.145(c)(1) an amendment corresponding to the amendment to § 2.145(a)(1) that it is unnecessary for a party to request reconsideration before filing a civil action seeking judicial review of a Board decision, but a party requesting reconsideration must do so before filing the civil action. The Office proposes to replace current § 2.145(c)(2) with a provision that specifies the requirements for serving the Director with a complaint by an applicant or registrant in an ex parte case who seeks remedy by civil action under section 21(b) of the Act. The proposed amendment, which references Federal Rule of Civil Procedure 4(i) and § 104.2, is intended to facilitate proper service of complaints in such actions on the Director. The Office proposes to replace current § 2.145(c)(3) with a modified version of the provision currently in § 2.145(c)(4), to specify that the party who commences a civil action for review of a Board decision in an inter partes case must file notice thereof with the Trademark Trial and Appeal Board via ESTTA no later than five business days after filing the complaint in district court. The addition of a time frame for filing the notice of the civil action with the Board, and explicitly stating that the notice must identify the civil action with particularity, is necessary to ensure that the Board is timely notified when parties seek judicial review of its decisions and to avoid premature termination of a proceeding.

The Office proposes to amend § 2.145(d) regarding time for appeal or civil action by restructuring the subsections by the type of action (*i.e.,* (1) for an appeal to the Federal Circuit, (2) for a notice of election, or (3) for a civil action) and to add a new subsection (d)(4)(i) regarding time computation if a request for reconsideration is filed. The Office proposes to move the time computation provision currently in (d)(2) regarding when the last day of time falls on a holiday to new subsection (d)(4)(ii) and to omit the addition of one day to any two-month time that includes February 28. The Office also proposes to change the times for filing a notice of appeal or commencing a civil action from two months to sixty-three days (*i.e.,* nine weeks) from the date of the final decision of the Board. The proposed amendment aligns the times for appeal from Board action with those for the Patent Trial and Appeal Board in Part 90 of Title 37 of the Code of Federal Regulations and is intended to simplify calculation of the deadlines for taking action.

The Office proposes to amend § 2.145(e) to specify that a request for extension of time to seek judicial review must be filed as provided in § 104.2 and addressed to the attention of the Office of the Solicitor, to which the Director has delegated his or her authority to decide such requests, with a copy filed with the Board via ESTTA. The proposed amendment is intended to facilitate proper filing of and timely action upon extension requests and to avoid premature termination of a Board proceeding.

General Information and Correspondence in Trademark Cases

Addresses for Trademark Correspondence With the United States Patent and Trademark Office

The Office proposes to amend §§ 2.190(a) and (c) to reflect a nomenclature change from the Assignment Services Division to the Assignment Recordation Branch. The Office proposes to amend § 2.190(b) to direct that documents in proceedings before the Board be filed through ESTTA. The proposed amendment codifies the use of electronic filing.

Business To Be Transacted in Writing

The Office proposes to amend § 2.191 to direct that documents in proceedings before the Board be filed through ESTTA. The proposed amendment codifies the use of electronic filing.

Rulemaking Considerations

Administrative Procedure Act: The changes in this rulemaking involve rules of agency practice and procedure and/or interpretive rules. *See National Organization of Veterans' Advocates* v. *Secretary of Veterans Affairs,* 260 F.3d 1365, 1375 (Fed. Cir. 2001) (Rule that clarifies interpretation of a statute is interpretive.); *Bachow Communications Inc.* v. *FCC,* 237 F.3d 683, 690 (D.C. Cir. 2001) (Rules governing an application process are procedural under the Administrative Procedure Act.); *Inova Alexandria Hospital* v. *Shalala,* 244 F.3d 342, 350 (4th Cir. 2001) (Rules for handling appeals were procedural where they did not change the substantive standard for reviewing claims.).

Accordingly, prior notice and opportunity for public comment for the rule changes are not required pursuant to 5 U.S.C. 553(b) or (c), or any other law. *See Cooper Techs. Co.* v. *Dudas,* 536 F.3d 1330, 1336–37 (Fed. Cir. 2008) (stating that 5 U.S.C. 553, and thus 35 U.S.C. 2(b)(2), does not require notice and comment rulemaking for "interpretative rules, general statements of policy, or rules of agency organization, procedure, or practice" (quoting 5 U.S.C. 553(b)(A))). However, the Office chose to seek public comment before implementing the rule to benefit from the public's input.

Regulatory Flexibility Act: Under the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*), whenever an agency is required by 5 U.S.C. 553 (or any other law) to publish a notice of proposed rulemaking (NPRM), the agency must prepare and make available for public comment an Initial Regulatory Flexibility Analysis, unless the agency certifies under 5 U.S.C. 605(b) that the proposed rule, if implemented, will not have a significant economic impact on a substantial number of small entities. 5 U.S.C. 603, 605.

For the reasons set forth herein, the Deputy General Counsel for General Law of the United States Patent and Trademark Office has certified to the Chief Counsel for Advocacy of the Small Business Administration that this rule will not have a significant economic impact on a substantial number of small entities. *See* 5 U.S.C. 605(b).

The proposed rules involve changes to rules of agency practice and procedure in matters before the Trademark Trial and Appeal Board. The primary changes are to codify certain existing practices, increase efficiency and streamline proceedings, and provide greater clarity as to certain requirements in Board proceedings. The proposed rules do not alter any substantive criteria used to decide cases.

The proposed rules will apply to all persons appearing before the Board. Applicants for a trademark are not industry specific and may consist of individuals, small businesses, non-profit organizations, and large corporations. The USPTO does not collect or maintain statistics in Board cases on small- versus large-entity applicants, and this information would be required in order to determine the number of small entities that would be affected by the proposed rules.

The burdens, if any, to all entities, including small entities, imposed by these rule changes will be minor and consist of additional responsibilities and procedural requirements on parties appearing before the Board. Two possible sources of burden may come from the proposed requirement that all submissions will be filed through the Board's online filing system, the Electronic System for Trademark Trials and Appeals ("ESTTA"), except in certain limited circumstances, and the requirement that service between parties be conducted by email for all filings with the Board and any other papers. For impacted entities that do not have the necessary equipment and internet service, this may result in additional costs to obtain this ability or to petition to file on paper. However, the USPTO does not anticipate this requirement to impact a significant number of entities impacted by this rule as well over 95 percent of filings are already submitted electronically, and it is common practice among parties to use electronic service for all filings with the Board.

In most instances the rule changes will lessen the burdens on parties, including small entities. For example, the Office proposes shifting away from the parties to itself the obligation to serve notices of opposition, petitions for cancellation, and concurrent use proceedings. Moreover, the proposed rules provide for the option of electronic service of other documents among the parties to a proceeding, thereby eliminating the existing need to arrange for the mailing or hand delivery of these documents. Also, the Office proposes making discovery less onerous for the parties by imposing limitations on the volume of discovery, incorporating a proportionality requirement, and allowing parties to present direct testimony by affidavit or declaration. The proposed rules also keep burdens and costs lower for the parties by permitting remote attendance at oral hearings, thereby eliminating the need for travel to appear in person. Overall, the proposed rules will have a net benefit to the parties to proceedings by increasing convenience, providing efficiency and clarity in the process, and streamlining the procedures. Therefore, this action will not have a significant economic impact on a substantial number of small entities.

Executive Order 12866: This rule has been determined not to be significant for purposes of Executive Order 12866.

Executive Order 13563 (Improving Regulation and Regulatory Review): The Office has complied with Executive Order 13563 (Jan. 18, 2011). Specifically, the Office has, to the extent feasible and applicable: (1) Made a reasoned determination that the benefits justify the costs of the rule changes; (2) tailored the rule to impose the least burden on society consistent with obtaining the regulatory objectives; (3) selected a regulatory approach that maximizes net benefits; (4) specified performance objectives; (5) identified and assessed available alternatives; (6) provided the public with a meaningful opportunity to participate in the regulatory process, including soliciting the views of those likely affected prior to issuing a notice of proposed rulemaking, and provided online access to the rulemaking docket; (7) attempted to promote coordination, simplification, and harmonization across government agencies and identified goals designed to promote innovation; (8) considered approaches that reduce burdens and maintain flexibility and freedom of choice for the public; and (9) ensured the objectivity of scientific and technological information and processes, to the extent applicable.

Executive Order 13132: This rule does not contain policies with federalism implications sufficient to warrant preparation of a Federalism Assessment under Executive Order 13132 (Aug. 4, 1999).

Congressional Review Act: Under the Congressional Review Act provisions of the Small Business Regulatory Enforcement Fairness Act of 1996 (5 U.S.C. 801 *et seq.*), prior to issuing any final rule, the Office will submit a report containing the final rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the Government Accountability Office. The changes in this rule are not expected to result in an annual effect on the economy of 100 million dollars or more, a major increase in costs or prices, or significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic and export markets. Therefore, this rule change is not expected to result in a "major rule" as defined in 5 U.S.C. 804(2).

Unfunded Mandate Reform Act of 1995: The Unfunded Mandates Reform Act (2 U.S.C. 1501 *et seq.*) requires that agencies prepare an assessment of anticipated costs and benefits before issuing any rule that may result in expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more (adjusted annually for inflation) in any given year. This rule will have no such effect on State, local, and tribal governments or the private sector.

Paperwork Reduction Act: The Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3549) requires that the Office consider the impact of paperwork and other information collection burdens imposed on the public. This proposed rule involves information collection requirements that are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3549). The collections of information involved in this rulemaking have been reviewed and previously approved by OMB under control numbers 0651–0054. This proposed rule, if adopted, would shift a greater portion of paper filings to electronic filings. However, this rulemaking would not add any additional information requirements or fees for parties before the Board, and therefore, it would not materially change the information collection burdens approved under the OMB control number 0651–0054. If the proposed rule is adopted, the Office will submit a change worksheet to the information collection to recognize the greater shift of filings to an electronic format and enter any related adjustments. Notwithstanding any other provision of law, no person is required to respond to, nor shall any person be subject to, a penalty for failure to comply with a collection of information subject to the requirements of the Paperwork Reduction Act unless that collection of information displays a currently valid OMB control number.

List of Subjects

37 CFR Part 2

Administrative practice and procedure, Trademarks.

For the reasons given in the preamble and under the authority contained in 15 U.S.C. 1113, 15 U.S.C. 1123, and 35 U.S.C. 2, as amended, the Office proposes to amend part 2 of title 37 as follows:

PART 2—RULES OF PRACTICE IN TRADEMARK CASES

■ 1. The authority citation for 37 CFR part 2 continues to read as follows:

Authority: 15 U.S.C. 1113, 15 U.S.C. 1123, 35 U.S.C. 2, Section 10(c) of Pub. L. 112–29, unless otherwise noted.

■ 2. Revise § 2.92 to read as follows:

§ 2.92 Preliminary to interference.

An interference which has been declared by the Director will not be instituted by the Trademark Trial and Appeal Board until the examining attorney has determined that the marks which are to form the subject matter of the controversy are registrable, and all of the marks have been published in the Official Gazette for opposition.

■ 3. In § 2.98 revise the second sentence to read as follows:

§ 2.98 Adding party to interference.

* * * If an application which is or might be the subject of a petition for addition to an interference is not added, the examining attorney may suspend action on the application pending termination of the interference proceeding.

■ 4. In § 2.99 revise paragraphs (c), (d)(1), (d)(2), (d)(3), and (f)(3) to read as follows:

§ 2.99 Application to register as concurrent user.

* * * * *

(c) If no opposition is filed, or if all oppositions that are filed are dismissed or withdrawn, the Trademark Trial and Appeal Board will send a notice of institution to the applicant for concurrent use registration (plaintiff) and to each applicant, registrant or user specified as a concurrent user in the application (defendants). The notice for each defendant shall state the name and address of the plaintiff and of the plaintiff's attorney or other authorized representative, if any, together with the serial number and filing date of the application. If a party has provided the Office with an email address, the notice will be transmitted via email.

(d)(1) The Board's notice of institution will include a web link or web address for the concurrent use application proceeding contained in Office records.

(2) An answer to the notice is not required in the case of an applicant or registrant whose application or

registration is acknowledged by the concurrent use applicant in the concurrent use application, but a statement, if desired, may be filed within forty days after the issuance of the notice; in the case of any other party specified as a concurrent user in the application, an answer must be filed within forty days after the issuance of the notice.

(3) If an answer, when required, is not filed, judgment will be entered precluding the defaulting user from claiming any right more extensive than that acknowledged in the application(s) for concurrent use registration, but the burden of proving entitlement to registration(s) will remain with the concurrent use applicant(s).

* * * * *

(f) * * *

(3) A true copy of the court decree is submitted to the examining attorney; and

* * * * *

■ 5. Revise § 2.101 to read as follows:

§ 2.101 Filing an opposition.

(a) An opposition proceeding is commenced by filing in the Office a timely notice of opposition with the required fee.

(b) Any person who believes that he, she or it would be damaged by the registration of a mark on the Principal Register may file an opposition addressed to the Trademark Trial and Appeal Board. The opposition need not be verified, but must be signed by the opposer or the opposer's attorney, as specified in § 11.1 of this chapter, or other authorized representative, as specified in § 11.14(b) of this chapter. Electronic signatures pursuant to § 2.193(c) are required for oppositions filed through ESTTA under paragraphs (b)(1) or (2) of this section.

(1) An opposition to an application must be filed through ESTTA. In the event that ESTTA is unavailable due to technical problems, or when extraordinary circumstances are present, an opposition against an application based on Section 1 or 44 of the Act may be filed in paper form. An opposition to an application based on Section 66(a) of the Act must be filed through ESTTA and may not under any circumstances be filed in paper form.

(2) A paper opposition to an application based on Section 1 or 44 of the Act must be filed by the due date set forth in paragraph (c) of this section and be accompanied by a Petition to the Director under § 2.146(a)(5), with the fees therefor and the showing required under paragraph (b)(1) of this section. Timeliness of the paper submission will be determined in accordance with §§ 2.195 through 2.198.

(c) The opposition must be filed within thirty days after publication (§ 2.80) of the application being opposed or within an extension of time (§ 2.102) for filing an opposition. The opposition must be accompanied by the required fee for each party joined as opposer for each class in the application for which registration is opposed (see § 2.6).

(d) An otherwise timely opposition cannot be filed via ESTTA unless the opposition is accompanied by a fee that is sufficient to pay in full for each named party opposer to oppose the registration of a mark in each class specified in the opposition. A paper opposition that is not accompanied by the required fee sufficient to pay in full for each named party opposer for each class in the application for which registration is opposed may not be instituted. If time remains in the opposition period as originally set or as extended by the Board, the potential opposer may resubmit the opposition with the required fee.

(e) The filing date of an opposition is the date of electronic receipt in the Office of the notice of opposition, and required fee. In the rare instances that filing by paper is permitted under these rules, the filing date will be determined in accordance with §§ 2.195 through 2.198.

■ 6. Amend § 2.102 by revising:
■ a. Paragraphs (a), (b), (c)(1), and (c)(2);
■ b. Add a new second sentence after the first sentence in paragraph (c)(3);
■ c. Add new paragraph (d), and;
■ d. Add and reserve paragraph (e) to read as follows:

§ 2.102 Extension of time for filing an opposition.

(a) Any person who believes that he, she or it would be damaged by the registration of a mark on the Principal Register may file a request with the Trademark Trial and Appeal Board to extend the time for filing an opposition. The request need not be verified, but must be signed by the potential opposer or by the potential opposer's attorney, as specified in § 11.1 of this chapter, or authorized representative, as specified in § 11.14(b) of this chapter. Electronic signatures pursuant to § 2.193(c) are required for electronically filed extension requests.

(1) A request to extend the time for filing an opposition to an application must be filed through ESTTA. In the event that ESTTA is unavailable due to technical problems, or when extraordinary circumstances are present, a request to extend the opposition period for an application based on Section 1 or 44 of the Act may be filed in paper form by the opposition due date set forth in § 2.101(c). A request to extend the opposition period for an application based on Section 66(a) of the Act must be filed through ESTTA and may not under any circumstances be filed in paper form.

(2) A paper request to extend the opposition period for an application based on Section 1 or 44 of the Act must be filed by the due date set forth in § 2.101(c) and be accompanied by a Petition to the Director under § 2146(a)(5), with the fees therefor and the showing required under paragraph (a)(1) of this section. Timeliness of the paper submission will be determined in accordance with §§ 2.195 through 2.198.

(b) A request to extend the time for filing an opposition must identify the potential opposer with reasonable certainty. Any opposition filed during an extension of time must be in the name of the person to whom the extension was granted, except that an opposition may be accepted if the person in whose name the extension was requested was misidentified through mistake or if the opposition is filed in the name of a person in privity with the person who requested and was granted the extension of time.

(c) * * *

(1) A person may file a first request for (i) either a thirty-day extension of time, which will be granted upon request, or (ii) a ninety-day extension of time, which will be granted only for good cause shown. A sixty-day extension is not available as a first extension of time to oppose.

(2) If a person was granted an initial thirty-day extension of time, that person may file a request for an additional sixty-day extension of time, which will be granted only for good cause shown.

(3) * * * No other time period will be allowed for a final extension of the opposition period. * * *

(d) The filing date of a request to extend the time for filing an opposition is the date of electronic receipt in the Office of the request. In the rare instance that filing by paper is permitted under these rules, the filing date will be determined in accordance with §§ 2.195 through 2.198.

(e) Fees. [Reserved]

■ 7. Add and reserve § 2.103 to read as follows:

§ 2.103 [Reserved]

■ 8. Amend § 2.104 by revising paragraph (a), and adding new paragraph (c) to read as follows:

§ 2.104 Contents of opposition.

(a) The opposition must set forth a short and plain statement showing why the opposer believes he, she or it would be damaged by the registration of the opposed mark and state the grounds for opposition. ESTTA requires the opposer to select relevant grounds for opposition. The required accompanying statement supports and explains the grounds.

* * * * *

(c) An opposition to an application filed under Section 66(a) of the Act must identify the goods and/or services opposed and the grounds for opposition on the ESTTA cover sheet as well as in the accompanying statement. Opposition to a Section 66(a) application may not be amended to include goods, services or grounds beyond those set forth in the ESTTA cover sheet.

■ 9. Revise § 2.105 to read as follows:

§ 2.105 Notification to parties of opposition proceeding(s).

(a) When an opposition in proper form (see §§ 2.101 and 2.104) has been filed with the correct fee(s), and the opposition has been determined to be timely and complete, the Trademark Trial and Appeal Board shall prepare a notice of institution, which shall identify the proceeding as an opposition, number of the proceeding, and the application(s) involved; and the notice shall designate a time, not less than thirty days from the mailing date of the notice, within which an answer must be filed. If a party has provided the Office with an email address, the notice will be transmitted via email. The notice, which will include a web link or web address to access the electronic proceeding record, constitutes service of the notice of opposition to the applicant.

(b) The Board shall forward a copy of the notice to opposer, as follows:

(1) If the opposition is transmitted by an attorney, or a written power of attorney is filed, the Board will send the notice to the attorney transmitting the opposition or to the attorney designated in the power of attorney, provided that the person is an "attorney" as defined in § 11.1 of this chapter, at the email or correspondence address for the attorney.

(2) If opposer is not represented by an attorney in the opposition, but opposer has appointed a domestic representative, the Board will send the notice to the domestic representative, at the email or correspondence address of record for the domestic representative, unless opposer designates in writing another correspondence address.

(3) If opposer is not represented by an attorney in the opposition, and no domestic representative has been appointed, the Board will send the notice directly to opposer at the email or correspondence address of record for opposer, unless opposer designates in writing another correspondence address.

(c) The Board shall forward a copy of the notice to applicant, as follows:

(1) If the opposed application contains a clear indication that the application is being prosecuted by an attorney, as defined in § 11.1 of this chapter, the Board shall send the notice described in this section to applicant's attorney at the email or correspondence address of record for the attorney.

(2) If the opposed application is not being prosecuted by an attorney but a domestic representative has been appointed, the Board will send the notice described in this section to the domestic representative, at the email or correspondence address of record for the domestic representative, unless applicant designates in writing another correspondence address.

(3) If the opposed application is not being prosecuted by an attorney, and no domestic representative has been appointed, the Board will send the notice described in this section directly to applicant, at the email or correspondence address of record for the applicant, unless applicant designates in writing another correspondence address.

■ 10. Amend § 2.106 by revising paragraphs (a) and (b) to read as follows:

§ 2.106 Answer.

(a) If no answer is filed within the time initially set, or as may later be reset by the Board, the opposition may be decided as in case of default. The failure to file a timely answer tolls all deadlines, including the discovery conference, until the issue of default is resolved.

(b)(1) An answer shall state in short and plain terms the applicant's defenses to each claim asserted and shall admit or deny the averments upon which the opposer relies. If the applicant is without knowledge or information sufficient to form a belief as to the truth of an averment, applicant shall so state and this will have the effect of a denial. Denials may take any of the forms specified in Rule 8(b) of the Federal Rules of Civil Procedure. An answer may contain any defense, including the affirmative defenses of unclean hands, laches, estoppel, acquiescence, fraud, mistake, prior judgment, or any other matter constituting an avoidance or affirmative defense. When pleading special matters, the Federal Rules of Civil Procedure shall be followed. A reply to an affirmative defense shall not be filed. When a defense attacks the validity of a registration pleaded in the opposition, paragraph (b)(2) of this section shall govern. A pleaded registration is a registration identified by number by the party in the position of plaintiff in an original notice of opposition or in any amendment thereto made under Rule 15 of the Federal Rules of Civil Procedure.

(2)(i) A defense attacking the validity of any one or more of the registrations pleaded in the opposition shall be a compulsory counterclaim if grounds for such counterclaim exist at the time when the answer is filed. If grounds for a counterclaim are known to the applicant when the answer to the opposition is filed, the counterclaim shall be pleaded with or as part of the answer. If grounds for a counterclaim are learned during the course of the opposition proceeding, the counterclaim shall be pleaded promptly after the grounds therefor are learned. A counterclaim need not be filed if the claim is the subject of another proceeding between the same parties or anyone in privity therewith; but the applicant must promptly inform the Board, in the context of the opposition proceeding, of the filing of the other proceeding.

(ii) An attack on the validity of a registration pleaded by an opposer will not be heard unless a counterclaim or separate petition is filed to seek the cancellation of such registration.

(iii) The provisions of §§ 2.111 through 2.115, inclusive, shall be applicable to counterclaims. A time, not less than thirty days, will be designated by the Board within which an answer to the counterclaim must be filed.

(iv) The times for pleading, discovery, testimony, briefs or oral argument may be reset or extended when necessary, upon motion by a party, or as the Board may deem necessary, to enable a party fully to present or meet a counterclaim or separate petition for cancellation of a registration.

* * * * *

■ 11. Revise § 2.107 to read as follows:

§ 2.107 Amendment of pleadings in an opposition proceeding.

(a) Pleadings in an opposition proceeding against an application filed under section 1 or 44 of the Act may be amended in the same manner and to the same extent as in a civil action in a United States district court, except that, after the close of the time period for filing an opposition including any extension of time for filing an opposition, an opposition may not be amended to add to the goods or services opposed, or to add a joint opposer.

(b) Pleadings in an opposition proceeding against an application filed under section 66(a) of the Act may be amended in the same manner and to the same extent as in a civil action in a United States district court, except that, once filed, the opposition may not be amended to add grounds for opposition or goods or services beyond those identified in the notice of opposition, or to add a joint opposer. The grounds for opposition, the goods or services opposed, and the named opposers are limited to those identified in the ESTTA cover sheet regardless of what is contained in any attached statement.

■ 12. Revise § 2.111 to read as follows:

§ 2.111 Filing petition for cancellation.

(a) A cancellation proceeding is commenced by filing in the Office a timely petition for cancellation with the required fee.

(b) Any person who believes that he, she or it is or will be damaged by a registration may file a petition, addressed to the Trademark Trial and Appeal Board, for cancellation of the registration in whole or in part. The petition for cancellation need not be verified, but must be signed by the petitioner or the petitioner's attorney, as specified in § 11.1 of this chapter, or other authorized representative, as specified in § 11.14(b) of this chapter. Electronic signatures pursuant to § 2.193(c) are required for petitions submitted electronically via ESTTA. The petition for cancellation may be filed at any time in the case of registrations on the Supplemental Register or under the Act of 1920, or registrations under the Act of 1881 or the Act of 1905 which have not been published under section 12(c) of the Act, or on any ground specified in section 14(3) or (5) of the Act. In all other cases, the petition for cancellation and the required fee must be filed within five years from the date of registration of the mark under the Act or from the date of publication under section 12(c) of the Act.

(c)(1) A petition to cancel a registration must be filed through ESTTA. In the event that ESTTA is unavailable due to technical problems, or when extraordinary circumstances are present, a petition to cancel may be filed in paper form as provided in paragraph (c)(2) of this section.

(2) A paper petition to cancel a registration must be accompanied by a Petition to the Director under § 2.146(a)(5), with the fees therefor and the showing required under paragraph (c)(1) of this section. Timeliness of the paper submission, if relevant to a ground asserted in the petition to cancel, will be determined in accordance with §§ 2.195 through 2.198.

(d) The petition for cancellation must be accompanied by the required fee for each party joined as petitioner for each class in the registration(s) for which cancellation is sought (see § 2.6). A petition cannot be filed via ESTTA unless the petition is accompanied by a fee that is sufficient to pay in full for each named petitioner to seek cancellation of the registration(s) in each class specified in the petition. A petition filed in paper form that is not accompanied by a fee sufficient to pay in full for each named petitioner for each class in the registration(s) for which cancellation is sought may not be instituted.

(e) The filing date of a petition for cancellation is the date of electronic receipt in the Office of the petition and required fee. In the rare instances that filing by paper is permitted under these rules, the filing date of a petition for cancellation is the date identified in § 2.198.

■ 13. Revise § 2.112 to read as follows:

§ 2.112 Contents of petition for cancellation.

(a) The petition for cancellation must set forth a short and plain statement showing why the petitioner believes he, she or it is or will be damaged by the registration, state the ground for cancellation, and indicate, to the best of petitioner's knowledge, the name and address, and a current email address(es), of the current owner of the registration, and of any attorney, as specified in §§ 11.14(a) and (c) of this Chapter, reasonably believed by the petitioner to be a possible representative of the owner in matters regarding the registration. ESTTA requires the petitioner to select relevant grounds for petition to cancel. The required accompanying statement supports and explains the grounds.

(b) When appropriate, petitions for cancellation of different registrations owned by the same party may be joined in a consolidated petition for cancellation. The required fee must be included for each party joined as a petitioner for each class sought to be cancelled in each registration against which the petition for cancellation has been filed.

■ 14. Revise § 2.113 to read as follows:

§ 2.113 Notification of cancellation proceeding.

(a) When a petition for cancellation in proper form (see §§ 2.111 and 2.112) has been filed and the correct fee has been submitted, the Trademark Trial and Appeal Board shall prepare a notice of institution which shall identify the proceeding as a cancellation, number of the proceeding and the registration(s) involved; and shall designate a time, not less than thirty days from the mailing date of the notice, within which an answer must be filed. If a party has provided the Office with an email address, the notice will be transmitted via email. The notice, which will include a web link or web address to access the electronic proceeding record, constitutes service to the registrant of the petition to cancel.

(b) The Board shall forward a copy of the notice to petitioner, as follows:

(1) If the petition for cancellation is transmitted by an attorney, or a written power of attorney is filed, the Board will send the notice to the attorney transmitting the petition for cancellation or to the attorney designated in the power of attorney, provided that person is an "attorney" as defined in § 11.1 of this chapter, to the attorney's email or correspondence address of record for the attorney.

(2) If petitioner is not represented by an attorney in the cancellation proceeding, but petitioner has appointed a domestic representative, the Board will send the notice to the domestic representative, at the email or correspondence address of record for the domestic representative, unless petitioner designates in writing another correspondence address.

(3) If petitioner is not represented by an attorney in the cancellation proceeding, and no domestic representative has been appointed, the Board will send the notice directly to petitioner, at the email or correspondence address of record for petitioner, unless petitioner designates in writing another correspondence address.

(c)(1) The Board shall forward a copy of the notice to the party shown by the records of the Office to be the current owner of the registration(s) sought to be cancelled, except that the Board, in its discretion, may join or substitute as respondent a party who makes a showing of a current ownership interest in such registration(s).

(2) If the respondent has appointed a domestic representative, and such appointment is reflected in the Office's records, the Board will send the notice only to the domestic representative at the email or correspondence address of record for the domestic representative.

(3) In the case of a registration issued under 15 U.S.C. 1141i, notice will be sent to the international registration holder's designated representative. The notice, which will include a web link or web address to access the electronic

proceeding record, constitutes service to respondent of the petition to cancel.

(d) When the party alleged by the petitioner, pursuant to § 2.112(a), as the current owner of the registration(s) is not the record owner, a courtesy copy of the notice with a web link or web address to access the electronic proceeding record shall be forwarded to the alleged current owner. The alleged current owner may file a motion to be joined or substituted as respondent.

■ 15. Revise § 2.114 to read as follows:

§ 2.114 Answer.

(a) If no answer is filed within the time initially set, or as may later be reset by the Board, the petition may be decided as in case of default. The failure to file a timely answer tolls all deadlines, including the discovery conference, until the issue of default is resolved.

(b)(1) An answer shall state in short and plain terms the respondent's defenses to each claim asserted and shall admit or deny the averments upon which the petitioner relies. If the respondent is without knowledge or information sufficient to form a belief as to the truth of an averment, respondent shall so state and this will have the effect of a denial. Denials may take any of the forms specified in Rule 8(b) of the Federal Rules of Civil Procedure. An answer may contain any defense, including the affirmative defenses of unclean hands, laches, estoppel, acquiescence, fraud, mistake, prior judgment, or any other matter constituting an avoidance or affirmative defense. When pleading special matters, the Federal Rules of Civil Procedure shall be followed. A reply to an affirmative defense need not be filed. When a defense attacks the validity of a registration pleaded in the petition, paragraph (b)(2) of this section shall govern. A pleaded registration is a registration identified by number by the party in position of plaintiff in an original petition for cancellation, or a counterclaim petition for cancellation, or in any amendment thereto made under Rule 15 of the Federal Rules of Civil Procedure.

(2)(i) A defense attacking the validity of any one or more of the registrations pleaded in the petition shall be a compulsory counterclaim if grounds for such counterclaim exist at the time when the answer is filed. If grounds for a counterclaim are known to respondent when the answer to the petition is filed, the counterclaim shall be pleaded with or as part of the answer. If grounds for a counterclaim are learned during the course of the cancellation proceeding, the counterclaim shall be pleaded promptly after the grounds therefor are learned. A counterclaim need not be filed if the claim is the subject of another proceeding between the same parties or anyone in privity therewith; but the party in position of respondent and counterclaim plaintiff must promptly inform the Board, in the context of the primary cancellation proceeding, of the filing of the other proceeding.

(ii) An attack on the validity of a registration pleaded by a petitioner for cancellation will not be heard unless a counterclaim or separate petition is filed to seek the cancellation of such registration.

(iii) The provisions of §§ 2.111 through 2.115, inclusive, shall be applicable to counterclaims. A time, not less than thirty days, will be designated by the Board within which an answer to the counterclaim must be filed. Such response period may be reset as necessary by the Board, for a time period to be determined by the Board.

(iv) The times for pleading, discovery, testimony, briefs, or oral argument may be reset or extended when necessary, upon motion by a party, or as the Board may deem necessary, to enable a party fully to present or meet a counterclaim or separate petition for cancellation of a registration.

(c) The petition for cancellation or counterclaim petition for cancellation may be withdrawn without prejudice before the answer is filed. After the answer is filed, such petition or counterclaim petition may not be withdrawn without prejudice except with the written consent of the registrant or the registrant's attorney or other authorized representative.

■ 16. Amend § 2.116 by revising paragraphs (c) and (e) through (g) to read as follows:

§ 2.116 Federal Rules of Civil Procedure.

* * * * *

(c) The notice of opposition or the petition for cancellation and the answer correspond to the complaint and answer in a court proceeding.

* * * * *

(e) The submission of notices of reliance, declarations and affidavits, as well as the taking of depositions, during the assigned testimony periods correspond to the trial in court proceedings.

(f) Oral hearing, if requested, of arguments on the record and merits corresponds to oral summation in court proceedings.

(g) The Trademark Trial and Appeal Board's standard protective order is automatically imposed in all inter partes proceedings unless the parties, by stipulation approved by the Board, agree to an alternative order, or a motion by a party to use an alternative order is granted by the Board. The standard protective order is available at the Office's Web site. No material disclosed or produced by a party, presented at trial, or filed with the Board, including motions or briefs which discuss such material, shall be treated as confidential or shielded from public view unless designated as protected under the Board's standard protective order, or under an alternative order stipulated to by the parties and approved by the Board, or under an order submitted by motion of a party granted by the Board. The Board may treat as not confidential that material which cannot reasonably be considered confidential, notwithstanding a designation as such by a party.

■ 17. Amend by revising § 2.117 paragraph (c) to read as follows:

§ 2.117 Suspension of proceedings.

* * * * *

(c) Proceedings may also be suspended sua sponte by the Board, or, for good cause, upon motion or a stipulation of the parties approved by the Board. Many consented or stipulated motions to suspend are suitable for automatic approval by ESTTA, but the Board retains discretion to condition approval on the party or parties providing necessary information about the status of settlement talks, discovery activities, or trial activities, as may be appropriate.

■ 18. Revise § 2.118 to read as follows:

§ 2.118 Undelivered Office notices.

When a notice sent by the Office to any registrant or applicant is returned to the Office undelivered, including notification to the Office of non-delivery in paper or electronic form, additional notice may be given by publication in the Official Gazette.

■ 19. Revise § 2.119 and the heading to read as follows:

§ 2.119 Service and signing.

(a) Except for the notice of opposition or the petition to cancel, every submission filed in the Office in inter partes cases, including notices of appeal to the courts, must be served upon the other party or parties. Proof of such service must be made before the submission will be considered by the Office. A statement signed by the attorney or other authorized representative, attached to or appearing on the original submission when filed, clearly stating the date and manner in which service was made will be accepted as prima facie proof of service.

(b) Service of submissions filed with the Board and any other papers served on a party not required to be filed with the Board, must be on the attorney or other authorized representative of the party if there be such or on the party if there is no attorney or other authorized representative, and must be made by email, unless otherwise stipulated, or if the serving party can show by written explanation accompanying the submission or paper, or in a subsequent amended certificate of service, that service by email was attempted but could not be made due to technical problems or extraordinary circumstances, then service may be made in any of the following ways:

(1) By delivering a copy of the submission or paper to the person served;

(2) By leaving a copy at the usual place of business of the person served, with someone in the person's employment;

(3) When the person served has no usual place of business, by leaving a copy at the person's residence, with some person of suitable age and discretion who resides there;

(4) Transmission by the Priority Mail Express® Post Office to Addressee service of the United States Postal Service or by first-class mail, which may also be certified or registered;

(5) Transmission by overnight courier;

(6) Other forms of electronic transmission.

(c) When service is made by first-class mail, Priority Mail Express®, or overnight courier, the date of mailing or of delivery to the overnight courier will be considered the date of service.

(d) If a party to an inter partes proceeding is not domiciled in the United States and is not represented by an attorney or other authorized representative located in the United States, none of the parties to the proceeding is eligible to use the service option under paragraph (b)(4) of this section. The party not domiciled in the United States may designate by submission filed in the Office the name and address of a person residing in the United States on whom may be served notices or process in the proceeding. If the party has appointed a domestic representative, official communications of the Office will be addressed to the domestic representative unless the proceeding is being prosecuted by an attorney at law or other qualified person duly authorized under § 11.14(c) of this subchapter. If the party has not appointed a domestic representative and the proceeding is not being prosecuted by an attorney at law or other qualified person, the Office will send correspondence directly to the party, unless the party designates in writing another address to which correspondence is to be sent. The mere designation of a domestic representative does not authorize the person designated to prosecute the proceeding unless qualified under § 11.14(a), or qualified under § 11.14(b) and authorized under § 2.17(f).

(e) Every submission filed in an inter partes proceeding, and every request for an extension of time to file an opposition, must be signed by the party filing it, or by the party's attorney or other authorized representative, but an unsigned submission will not be refused consideration if a signed copy is submitted to the Office within the time limit set in the notification of this defect by the Office.

■ 20. Revise § 2.120 to read as follows:

§ 2.120 Discovery.

(a) *In general.* (1) Except as otherwise provided in this section, and wherever appropriate, the provisions of the Federal Rules of Civil Procedure relating to disclosure and discovery shall apply in opposition, cancellation, interference and concurrent use registration proceedings. The provisions of Rule 26 of the Federal Rules of Civil Procedure relating to required disclosures, the conference of the parties to discuss settlement and to develop a disclosure and discovery plan, the scope, proportionality, timing and sequence of discovery, protective orders, signing of disclosures and discovery responses, and supplementation of disclosures and discovery responses, are applicable to Board proceedings in modified form, as noted in these rules and as may be detailed in any order instituting an inter partes proceeding or subsequent scheduling order. The Board will specify the deadline for a discovery conference, the opening and closing dates for the taking of discovery, and the deadlines within the discovery period for making initial disclosures and expert disclosure. The trial order setting these deadlines and dates will be included within the notice of institution of the proceeding.

(2)(i) The discovery conference shall occur no later than the opening of the discovery period, and the parties must discuss the subjects set forth in Rule 26(f) of the Federal Rules of Civil Procedure and any subjects set forth in the Board's institution order. A Board Interlocutory Attorney or Administrative Trademark Judge will participate in the conference upon request of any party made after answer but no later than ten days prior to the deadline for the conference, or when the Board deems it useful for the parties to have Board involvement. The participating attorney or judge may expand or reduce the number or nature of subjects to be discussed in the conference as may be deemed appropriate. The discovery period will be set for a period of 180 days.

(ii) Initial disclosures must be made no later than thirty days after the opening of the discovery period.

(iii) Disclosure of expert testimony must occur in the manner and sequence provided in Rule 26(a)(2) of the Federal Rules of Civil Procedure, unless alternate directions have been provided by the Board in an institution order or any subsequent order resetting disclosure, discovery or trial dates. If the expert is retained after the deadline for disclosure of expert testimony, the party must promptly file a motion for leave to use expert testimony. Upon disclosure by any party of plans to use expert testimony, whether before or after the deadline for disclosing expert testimony, the Board, either on its own initiative or on notice from either party of the disclosure of expert testimony, may issue an order regarding expert discovery and/or set a deadline for any other party to disclose plans to use a rebuttal expert.

(iv) The parties may stipulate to a shortening of the discovery period, that there will be no discovery, that the number of discovery requests or depositions be limited, or that reciprocal disclosures be used in place of discovery. Limited extensions of the discovery period may be granted upon stipulation of the parties approved by the Board, or upon motion granted by the Board, or by order of the Board. If a motion for an extension is denied, the discovery period may remain as originally set or as reset. Disclosure deadlines and obligations may be modified upon written stipulation of the parties approved by the Board, or upon motion granted by the Board, or by order of the Board, but the expert disclosure deadline must always be scheduled prior to the close of discovery. If a stipulation or motion for modification is denied, discovery disclosure deadlines may remain as originally set or reset and obligations may remain unaltered.

(v) The parties are not required to prepare or transmit to the Board a written report outlining their discovery conference discussions, unless the parties have agreed to alter disclosure or discovery obligations set forth by these rules or applicable Federal Rules of Civil Procedure, or unless directed to file such a report by a participating

Board Interlocutory Attorney or Administrative Trademark Judge.

(3) A party must make its initial disclosures prior to seeking discovery, absent modification of this requirement by a stipulation of the parties approved by the Board, or a motion granted by the Board, or by order of the Board. Discovery depositions must be properly noticed and taken during the discovery period. Interrogatories, requests for production of documents and things, and requests for admission must be served early enough in the discovery period, as originally set or as may have been reset by the Board, so that responses will be due no later than the close of discovery. Responses to interrogatories, requests for production of documents and things, and requests for admission must be served within thirty days from the date of service of such discovery requests. The time to respond may be extended upon stipulation of the parties, or upon motion granted by the Board, or by order of the Board, but the response may not be due later than the close of discovery. The resetting of a party's time to respond to an outstanding request for discovery will not result in the automatic rescheduling of the discovery and/or testimony periods; such dates will be rescheduled only upon stipulation of the parties approved by the Board, or upon motion granted by the Board, or by order of the Board.

(b) *Discovery deposition within the United States.* The deposition of a natural person shall be taken in the Federal judicial district where the person resides or is regularly employed or at any place on which the parties agree in writing. The responsibility rests wholly with the party taking discovery to secure the attendance of a proposed deponent other than a party or anyone who, at the time set for the taking of the deposition, is an officer, director, or managing agent of a party, or a person designated under Rule 30(b)(6) or Rule 31(a) of the Federal Rules of Civil Procedure. (See 35 U.S.C. 24.)

(c) *Discovery deposition in foreign countries; or of foreign party within jurisdiction of the United States.* (1) The discovery deposition of a natural person residing in a foreign country who is a party or who, at the time set for the taking of the deposition, is an officer, director, or managing agent of a party, or a person designated under Rule 30(b)(6) or Rule 31(a) of the Federal Rules of Civil Procedure, shall, if taken in a foreign country, be taken in the manner prescribed by § 2.124 unless the Trademark Trial and Appeal Board, upon motion for good cause, orders that the deposition be taken by oral examination, or the parties so stipulate.

(2) Whenever a foreign party is or will be, during a time set for discovery, present within the United States or any territory which is under the control and jurisdiction of the United States, such party may be deposed by oral examination upon notice by the party seeking discovery. Whenever a foreign party has or will have, during a time set for discovery, an officer, director, managing agent, or other person who consents to testify on its behalf, present within the United States or any territory which is under the control and jurisdiction of the United States, the party must inform every adverse party of such presence and such officer, director, managing agent, or other person who consents to testify in its behalf may be deposed by oral examination upon notice by the party seeking discovery. The party seeking discovery may have one or more officers, directors, managing agents, or other persons who consent to testify on behalf of the adverse party, designated under Rule 30(b)(6) of the Federal Rules of Civil Procedure. The deposition of a person under this paragraph shall be taken in the Federal judicial district where the witness resides or is regularly employed, or, if the witness neither resides nor is regularly employed in a Federal judicial district, where the witness is at the time of the deposition. This paragraph does not preclude the taking of a discovery deposition of a foreign party by any other procedure provided by paragraph (c)(1) of this section.

(d) *Interrogatories.* The total number of written interrogatories which a party may serve upon another party pursuant to Rule 33 of the Federal Rules of Civil Procedure, in a proceeding, shall not exceed seventy-five, counting subparts. If a party upon which interrogatories have been served believes that the number of interrogatories exceeds the limitation specified in this paragraph, and is not willing to waive this basis for objection, the party shall, within the time for (and instead of) serving answers and specific objections to the interrogatories, serve a general objection on the ground of their excessive number. If the inquiring party, in turn, files a motion to compel discovery, the motion must be accompanied by a copy of the set(s) of the interrogatories which together are said to exceed the limitation, and must otherwise comply with the requirements of paragraph (f) of this section.

(e) *Requests for production.* The total number of requests for production which a party may serve upon another party pursuant to Rule 34 of the Federal Rules of Civil Procedure, in a proceeding, shall not exceed seventy-five, counting subparts. If a party upon which requests have been served believes that the number of requests exceeds the limitation specified in this paragraph, and is not willing to waive this basis for objection, the party shall, within the time for (and instead of) serving responses and specific objections to the requests, serve a general objection on the ground of their excessive number. If the inquiring party, in turn, files a motion to compel discovery, the motion must be accompanied by a copy of the set(s) of the requests which together are said to exceed the limitation, and must otherwise comply with the requirements of paragraph (f) of this section. The time, place, and manner for production of documents, electronically stored information, and tangible things shall comport with the provisions of Rule 34 of the Federal Rules of Civil Procedure, or be made pursuant to agreement of the parties, or where and in the manner which the Trademark Trial and Appeal Board, upon motion, orders.

(f) *Motion for an order to compel disclosure or discovery.* (1) If a party fails to make required initial disclosures or expert testimony disclosure, or fails to designate a person pursuant to Rule 30(b)(6) or Rule 31(a) of the Federal Rules of Civil Procedure, or if a party, or such designated person, or an officer, director or managing agent of a party fails to attend a deposition or fails to answer any question propounded in a discovery deposition, or any interrogatory, or fails to produce and permit the inspection and copying of any document, electronically stored information, or tangible thing, the party entitled to disclosure or seeking discovery may file a motion to compel disclosure, a designation, or attendance at a deposition, or an answer, or production and an opportunity to inspect and copy. A motion to compel initial disclosures must be filed within thirty days after the deadline therefor and include a copy of the disclosure(s), if any, and a motion to compel an expert testimony disclosure must be filed prior to the close of the discovery period. A motion to compel discovery must be filed prior to the deadline for pretrial disclosures for the first testimony period as originally set or as reset. A motion to compel discovery shall include a copy of the request for designation of a witness or of the relevant portion of the discovery deposition; or a copy of the interrogatory with any answer or objection that was made; or a copy of the request for production, any proffer of production or objection to production in response to the request, and a list and brief description of the documents, electronically stored information, or tangible things that were not produced for inspection and copying. A motion to compel initial disclosures, expert testimony disclosure, or discovery must be supported by a showing from the moving party that such party or the attorney therefor has made a good faith effort, by conference or correspondence, to resolve with the other party or the attorney therefor the issues presented in the motion but the parties were unable to resolve their differences. If issues raised in the motion are subsequently resolved by agreement of the parties, the moving party should inform the Board in writing of the issues in the motion which no longer require adjudication.

(2) When a party files a motion for an order to compel initial disclosures, expert testimony disclosure, or discovery, the case will be suspended by the Board with respect to all matters not germane to the motion. After the motion to compel is filed and served, no party should file any paper that is not germane to the motion, except as otherwise specified in the Board's suspension order. Nor may any party serve any additional discovery until the period of suspension is lifted or expires by or under order of the Board. The filing of a motion to compel any disclosure or discovery shall not toll the time for a party to comply with any disclosure requirement or to respond to any outstanding discovery requests or to appear for any noticed discovery deposition. If discovery has closed, however, the parties need not make pretrial disclosures until directed to do so by the Board.

(g) *Motion for a protective order.* Upon motion by a party obligated to make initial disclosures or expert testimony disclosure or from whom discovery is sought, and for good cause, the Trademark Trial and Appeal Board may make any order which justice requires to protect a party from annoyance, embarrassment, oppression, or undue burden or expense, including one or more of the types of orders provided by clauses (A) through (H), inclusive, of Rule 26(c)(1) of the Federal Rules of Civil Procedure. If the motion for a protective order is denied in whole or in part, the Board may, on such conditions (other than an award of expenses to the party prevailing on the motion) as are just, order that any party comply with disclosure obligations or provide or permit discovery.

(h) *Sanctions.* (1) If a party fails to participate in the required discovery conference, or if a party fails to comply with an order of the Trademark Trial and Appeal Board relating to disclosure or discovery, including a protective order, the Board may make any appropriate order, including those provided in Rule 37(b)(2) of the Federal Rules of Civil Procedure, except that the Board will not hold any person in contempt or award expenses to any party. The Board may impose against a party any of the sanctions provided in Rule 37(b)(2) in the event that said party or any attorney, agent, or designated witness of that party fails to comply with a protective order made pursuant to Rule 26(c) of the Federal Rules of Civil Procedure. A motion for sanctions against a party for its failure to participate in the required discovery conference must be filed prior to the deadline for any party to make initial disclosures.

(2) If a party fails to make required initial disclosures or expert testimony disclosure, and such party or the party's attorney or other authorized representative informs the party or parties entitled to receive disclosures that required disclosures will not be made, the Board may make any appropriate order, as specified in paragraph (h)(1) of this section. If a party, or an officer, director, or managing agent of a party, or a person designated under Rule 30(b)(6) or 31(a) of the Federal Rules of Civil Procedure to testify on behalf of a party, fails to attend the party's or person's discovery deposition, after being served with proper notice, or fails to provide any response to a set of interrogatories or to a set of requests for production of documents and things, and such party or the party's attorney or other authorized representative informs the party seeking discovery that no response will be made thereto, the Board may make any appropriate order, as specified in paragraph (h)(1) of this section.

(i) *Requests for admission.* The total number of requests for admission which a party may serve upon another party pursuant to Rule 36 of the Federal Rules of Civil Procedure, in a proceeding, shall not exceed seventy-five, counting subparts. If a party upon which requests for admission have been served believes that the number of requests for admission exceeds the limitation specified in this paragraph, and is not willing to waive this basis for objection, the party shall, within the time for (and instead of) serving answers and specific objections to the requests for admission, serve a general objection on the ground of their excessive number. However, independent of this limit, a party may make one comprehensive request for admission of any adverse party that has produced documents for an admission authenticating such documents, or specifying which documents cannot be authenticated.

(1) Any motion by a party to determine the sufficiency of an answer or objection, including testing the sufficiency of a general objection on the ground of excessive number, to a request made by that party for an admission must be filed prior to the deadline for pretrial disclosures for the first testimony period, as originally set or as reset. The motion shall include a copy of the request for admission and any exhibits thereto and of the answer or objection. The motion must be supported by a written statement from the moving party showing that such party or the attorney therefor has made a good faith effort, by conference or correspondence, to resolve with the other party or the attorney therefor the issues presented in the motion and has been unable to reach agreement. If issues raised in the motion are subsequently resolved by agreement of the parties, the moving party should inform the Board in writing of the issues in the motion which no longer require adjudication.

(2) When a party files a motion to determine the sufficiency of an answer or objection to a request for an admission, the case will be suspended by the Board with respect to all matters not germane to the motion. After the motion is filed and served, no party should file any paper that is not germane to the motion, except as otherwise specified in the Board's suspension order. Nor may any party serve any additional discovery until the period of suspension is lifted or expires by or under order of the Board. The filing of a motion to determine the sufficiency of an answer or objection to a request for admission shall not toll the time for a party to comply with any disclosure requirement or to respond to any outstanding discovery requests or to appear for any noticed discovery deposition. If discovery has closed, however, the parties need not make pretrial disclosures until directed to do so by the Board.

(j) *Telephone and pretrial conferences.* (1) Whenever it appears to the Trademark Trial and Appeal Board that a stipulation or motion filed in an inter partes proceeding is of such nature that a telephone conference would be beneficial, the Board may, upon its own initiative or upon request made by one or both of the parties, schedule a telephone conference.

(2) Whenever it appears to the Trademark Trial and Appeal Board that

questions or issues arising during the interlocutory phase of an inter partes proceeding have become so complex that their resolution by correspondence or telephone conference is not practical and that resolution would likely be facilitated by a conference in person of the parties or their attorneys with an Administrative Trademark Judge or an Interlocutory Attorney of the Board, the Board may, upon its own initiative, direct that the parties and/or their attorneys meet with the Board for a disclosure, discovery or pretrial conference on such terms as the Board may order.

(3) Parties may not make a recording of the conferences referenced in paragraphs (j)(1) and (j)(2) of this section.

(k) *Use of discovery deposition, answer to interrogatory, admission or written disclosure.* (1) The discovery deposition of a party or of anyone who at the time of taking the deposition was an officer, director or managing agent of a party, or a person designated by a party pursuant to Rule 30(b)(6) or Rule 31(a) of the Federal Rules of Civil Procedure, may be offered in evidence by an adverse party.

(2) Except as provided in paragraph (k)(1) of this section, the discovery deposition of a witness, whether or not a party, shall not be offered in evidence unless the person whose deposition was taken is, during the testimony period of the party offering the deposition, dead; or out of the United States (unless it appears that the absence of the witness was procured by the party offering the deposition); or unable to testify because of age, illness, infirmity, or imprisonment; or cannot be served with a subpoena to compel attendance at a testimonial deposition; or there is a stipulation by the parties; or upon a showing that such exceptional circumstances exist as to make it desirable, in the interest of justice, to allow the deposition to be used. The use of a discovery deposition by any party under this paragraph will be allowed only by stipulation of the parties approved by the Trademark Trial and Appeal Board, or by order of the Board on motion, which shall be filed when the party makes its pretrial disclosures, unless the motion is based upon a claim that such exceptional circumstances exist as to make it desirable, in the interest of justice, to allow the deposition to be used, even though such deadline has passed, in which case the motion shall be filed promptly after the circumstances claimed to justify use of the deposition became known.

(3)(i) A discovery deposition, an answer to an interrogatory, an admission to a request for admission, or a written initial disclosure, which may be offered in evidence under the provisions of paragraph (k) of this section, may be made of record in the case by filing the deposition or any part thereof with any exhibit to the part that is filed, or a copy of the interrogatory and answer thereto with any exhibit made part of the answer, or a copy of the request for admission and any exhibit thereto and the admission (or a statement that the party from which an admission was requested failed to respond thereto), or a copy of the written initial disclosure, together with a notice of reliance in accordance with § 2.122(g). The notice of reliance and the material submitted thereunder should be filed during the testimony period of the party that files the notice of reliance. An objection made at a discovery deposition by a party answering a question subject to the objection will be considered at final hearing.

(ii) A party that has obtained documents from another party through disclosure or under Rule 34 of the Federal Rules of Civil Procedure may not make the documents of record by notice of reliance alone, except to the extent that they are admissible by notice of reliance under the provisions of § 2.122(e), or the party has obtained an admission or stipulation from the producing party that authenticates the documents.

(4) If only part of a discovery deposition is submitted and made part of the record by a party, an adverse party may introduce under a notice of reliance any other part of the deposition which should in fairness be considered so as to make not misleading what was offered by the submitting party. A notice of reliance filed by an adverse party must be supported by a written statement explaining why the adverse party needs to rely upon each additional part listed in the adverse party's notice, failing which the Board, in its discretion, may refuse to consider the additional parts.

(5) Written disclosures, an answer to an interrogatory, or an admission to a request for admission, may be submitted and made part of the record only by the receiving or inquiring party except that, if fewer than all of the written disclosures, answers to interrogatories, or fewer than all of the admissions, are offered in evidence by the receiving or inquiring party, the disclosing or responding party may introduce under a notice of reliance any other written disclosures, answers to interrogatories, or any other admissions, which should in fairness be considered so as to make not misleading what was offered by the receiving or inquiring party. The notice of reliance filed by the disclosing or responding party must be supported by a written statement explaining why the disclosing or responding party needs to rely upon each of the additional written disclosures or discovery responses listed in the disclosing or responding party's notice, and absent such statement, the Board, in its discretion, may refuse to consider the additional written disclosures or responses.

(6) Paragraph (k) of this section will not be interpreted to preclude reading or use of written disclosures or documents, a discovery deposition, or answer to an interrogatory, or admission as part of the examination or cross-examination of any witness during the testimony period of any party.

(7) When a written disclosure, a discovery deposition, or a part thereof, or an answer to an interrogatory, or an admission, or an authenticated produced document has been made of record by one party in accordance with the provisions of paragraph (k)(3) of this section, it may be referred to by any party for any purpose permitted by the Federal Rules of Evidence.

(8) Written disclosures or disclosed documents, requests for discovery, responses thereto, and materials or depositions obtained through the disclosure or discovery process should not be filed with the Board, except when submitted with a motion relating to disclosure or discovery, or in support of or in response to a motion for summary judgment, or under a notice of reliance, when permitted, during a party's testimony period.

■ 21. Amend § 2.121 by revising the heading and paragraphs (a), (c) through (e) to read as follows:

§ 2.121 Assignment of times for taking testimony and presenting evidence.

(a) The Trademark Trial and Appeal Board will issue a trial order setting a deadline for each party's required pretrial disclosures and assigning to each party its time for taking testimony and presenting evidence ("testimony period"). No testimony shall be taken or evidence presented except during the times assigned, unless by stipulation of the parties approved by the Board, or upon motion granted by the Board, or by order of the Board. The deadlines for pretrial disclosures and the testimony periods may be rescheduled by stipulation of the parties approved by the Board, or upon motion granted by the Board, or by order of the Board. If a motion to reschedule any pretrial disclosure deadline and/or testimony period is denied, the pretrial disclosure deadline or testimony period and any subsequent remaining periods may remain as set. The resetting of the closing date for discovery will result in the rescheduling of pretrial disclosure deadlines and testimony periods without action by any party. The resetting of a party's testimony period will result in the rescheduling of the remaining pretrial disclosure deadlines without action by any party.

* * * * *

(c) A testimony period which is solely for rebuttal will be set for fifteen days. All other testimony periods will be set for thirty days. The periods may be shortened or extended by stipulation of the parties approved by the Trademark Trial and Appeal Board, or may be extended upon motion granted by the Board, or by order of the Board. If a motion for an extension is denied, the testimony periods and their associated pretrial disclosure deadlines may remain as set.

(d) When parties stipulate to the rescheduling of a deadline for pretrial disclosures and subsequent testimony periods or to the rescheduling of the closing date for discovery and the rescheduling of subsequent deadlines for pretrial disclosures and testimony periods, a stipulation presented in the form used in a trial order, signed by the parties, or a motion in said form signed by one party and including a statement that every other party has agreed thereto, shall be submitted to the Board through ESTTA, with the relevant dates set forth and an express statement that all parties agree to the new dates.

(e) A party need not disclose, prior to its testimony period, any notices of reliance it intends to file during its testimony period. However, no later than fifteen days prior to the opening of each testimony period, or on such alternate schedule as may be provided by order of the Board, the party scheduled to present evidence must disclose the name and, if not previously provided, the telephone number and address of each witness from whom it intends to take testimony, or may take testimony if the need arises, general identifying information about the witness, such as relationship to any party, including job title if employed by a party, or, if neither a party nor related to a party, occupation and job title, a general summary or list of subjects on which the witness is expected to testify, and a general summary or list of the types of documents and things which may be introduced as exhibits during the testimony of the witness. The testimony of a witness may be taken upon oral examination and transcribed, or presented in the form of an affidavit or declaration, as provided in § 2.123. Pretrial disclosure of a witness under this subsection does not substitute for issuance of a proper notice of examination under § 2.123(c) or § 2.124(b). If a party does not plan to take testimony from any witnesses, it must so state in its pretrial disclosure. When a party fails to make required pretrial disclosures, any adverse party or parties may have remedy by way of a motion to the Board to delay or reset any subsequent pretrial disclosure deadlines and/or testimony periods. A party may move to quash a noticed testimony deposition of a witness not identified or improperly identified in pretrial disclosures before the deposition. When testimony has been presented by affidavit or declaration, but was not covered by an earlier pretrial disclosure, the remedy for any adverse party is the prompt filing of a motion to strike, as provided in §§ 2.123 and 2.124.

■ 22. Amend § 2.122 by revising paragraphs (a) through (e), and addingparagraph (g), to read as follows:

§ 2.122 Matters in evidence.

(a) *Applicable Rules.* Unless the parties otherwise stipulate, the rules of evidence for proceedings before the Trademark Trial and Appeal Board are the Federal Rules of Evidence, the relevant provisions of the Federal Rules of Civil Procedure, the relevant provisions of Title 28 of the United States Code, and the provisions of this Part of Title 37 of the Code of Federal Regulations. When evidence has been made of record by one party in accordance with these rules, it may be referred to by any party for any purpose permitted by the Federal Rules of Evidence.

(b) *Application and registration files.* (1) The file of each application or registration specified in a notice of interference, of each application or registration specified in the notice of a concurrent use registration proceeding, of the application against which a notice of opposition is filed, or of each registration against which a petition or counterclaim for cancellation is filed forms part of the record of the proceeding without any action by the parties and reference may be made to the file for any relevant and competent purpose.

(2) The allegation in an application for registration, or in a registration, of a date of use is not evidence on behalf of the applicant or registrant; a date of use of a mark must be established by competent evidence. Specimens in the file of an application for registration, or in the file of a registration, are not evidence on behalf of the applicant or registrant unless identified and introduced in evidence as exhibits during the period for the taking of testimony. Statements made in an affidavit or declaration in the file of an application for registration, or in the file of a registration, are not evidence on behalf of the applicant or registrant and must be established by competent evidence.

(c) *Exhibits to pleadings.* Except as provided in paragraph (d)(1) of this section, an exhibit attached to a pleading is not evidence on behalf of the party to whose pleading the exhibit is attached, and must be identified and introduced in evidence as an exhibit during the period for the taking of testimony.

(d) *Registrations.* (1) A registration of the opposer or petitioner pleaded in an opposition or petition to cancel will be received in evidence and made part of the record if the opposition or petition is accompanied by an original or photocopy of the registration prepared and issued by the Office showing both the current status of and current title to the registration, or by a current printout of information from the electronic database records of the Office showing the current status and title of the registration. For the cost of a copy of a registration showing status and title, see § 2.6(b)(4).

(2) A registration owned by any party to a proceeding may be made of record in the proceeding by that party by appropriate identification and introduction during the taking of testimony or by filing a notice of reliance in accordance with paragraph (g) of this section, which shall be accompanied by a copy (original or photocopy) of the registration prepared and issued by the Office showing both the current status of and current title to the registration, or by a current printout of information from the electronic database records of the Office showing the current status and title of the registration. The notice of reliance shall be filed during the testimony period of the party that files the notice.

(e) *Printed publications and official records.* (1) Printed publications, such as books and periodicals, available to the general public in libraries or of general circulation among members of the public or that segment of the public which is relevant in a particular proceeding, and official records, if the publication or official record is competent evidence and relevant to an issue, may be introduced in evidence by filing a notice of reliance on the material being offered in accordance with paragraph (g) of this section. The notice of reliance shall specify the printed publication (including information sufficient to identify the source and the date of the publication) or the official record and the pages to be read; and be accompanied by the official record or a copy thereof whose authenticity is established under the Federal Rules of Evidence, or by the printed publication or a copy of the relevant portion thereof. A copy of an official record of the Office need not be certified to be offered in evidence.

(2) Internet materials may be admitted into evidence under a notice of reliance in accordance with paragraph (g) of this section, in the same manner as a printed publication in general circulation, so long as the date the internet materials were accessed and their source (*e.g.,* URL) are provided.

* * * * *

(g) *Notices of reliance.* The types of evidence admissible by notice of reliance are identified in paragraphs (d)(2), (e)(1), and (e)(2) of this section and § 2.120(k). A notice of reliance shall be filed during the testimony period of the party that files the notice. For all evidence offered by notice of reliance, the notice must indicate generally the relevance of the evidence and associate it with one or more issues in the proceeding. Failure to identify the relevance of the evidence, or associate it with issues in the proceeding, with sufficient specificity is a procedural defect that can be cured by the offering party within the time set by Board order.

■ 23. Amend § 2.123 by revising paragraphs (a) through (c), (e) through (k), and removing paragraph (l) to read as follows:

§ 2.123 Trial testimony in inter partes cases.

(a)(1) The testimony of witnesses in inter partes cases may be submitted in the form of an affidavit or a declaration pursuant to § 2.20, filed during the proffering party's testimony period, subject to the right of any adverse party to elect to take and bear the expense of oral cross-examination of that witness as provided under paragraph (c) of this section if such witness is within the jurisdiction of the United States, or conduct cross-examination by written questions as provided in § 2.124 if such witness is outside the jurisdiction of the United States, and the offering party must make that witness available; or taken by deposition upon oral examination as provided by this section; or by deposition upon written questions as provided by § 2.124.

(2) A testimonial deposition taken in a foreign country shall be taken by deposition upon written questions as provided by § 2.124, unless the Board, upon motion for good cause, orders that the deposition be taken by oral examination or by affidavit or declaration, subject to the right of any adverse party to elect to take and bear the expense of cross-examination by written questions of that witness, or the parties so stipulate. If a party serves notice of the taking of a testimonial deposition upon written questions of a witness who is, or will be at the time of the deposition, present within the United States or any territory which is under the control and jurisdiction of the United States, any adverse party may, within twenty days from the date of service of the notice, file a motion with the Trademark Trial and Appeal Board, for good cause, for an order that the deposition be taken by oral examination. The proffering party must inform every adverse party when it knows that such witness will be within the jurisdiction of the United States during such party's testimony period.

(b) *Stipulations.* If the parties so stipulate in writing, depositions may be taken before any person authorized to administer oaths, at any place, upon any notice, and in any manner, and when so taken may be used like other depositions. The parties may stipulate in writing what a particular witness would testify to if called; or any relevant facts in the case may be stipulated in writing.

(c) *Notice of examination of witnesses.* Before the oral depositions of witnesses shall be taken by a party, due notice in writing shall be given to the adverse party or parties, as provided in § 2.119(b), of the time when and place where the depositions will be taken, of the cause or matter in which they are to be used, and the name and address of each witness to be examined. Depositions may be noticed for any reasonable time and place in the United States. A deposition may not be noticed for a place in a foreign country except as provided in paragraph (a)(2) of this section. No party shall take depositions in more than one place at the same time, nor so nearly at the same time that reasonable opportunity for travel from one place of examination to the other is not available. When a party elects to take oral cross-examination of an affiant or declarant, the notice of such election must be served on the adverse party and a copy filed with the Board within 10 days from the date of service of the affidavit or declaration and completed within 20 days from the date of service of the notice of election. Upon motion for good cause by any party, or upon its own initiative, the Board may extend the periods for electing and taking oral cross-examination. When such election has been made but cannot be completed within that testimony period, the Board, after the close of that testimony period, shall suspend or reschedule other proceedings in the matter to allow for the orderly completion of the oral cross-examination(s).

* * * * *

(e) *Examination of witnesses.* (1) Each witness before providing oral testimony shall be duly sworn according to law by the officer before whom the deposition is to be taken. Where oral depositions are taken, every adverse party shall have a full opportunity to cross-examine each witness. When testimony is proffered by affidavit or declaration, every adverse party will have the right to elect oral cross-examination of any witness within the jurisdiction of the United States. For examination of witnesses outside the jurisdiction of the United States, see § 2.124.

(2) The deposition shall be taken in answer to questions, with the questions and answers recorded in their regular order by the officer, or by some other person (who shall be subject to the provisions of Rule 28 of the Federal Rules of Civil Procedure) in the presence of the officer except when the officer's presence is waived on the record by agreement of the parties. The testimony shall be recorded and transcribed, unless the parties present agree otherwise. Exhibits which are marked and identified at the deposition will be deemed to have been offered into evidence, without any formal offer thereof, unless the intention of the party marking the exhibits is clearly expressed to the contrary.

(3) If pretrial disclosures or the notice of examination of witnesses served pursuant to paragraph (c) of this section are improper or inadequate with respect to any witness, an adverse party may cross-examine that witness under protest while reserving the right to object to the receipt of the testimony in evidence. Promptly after the testimony is completed, the adverse party, to preserve the objection, shall move to strike the testimony from the record, which motion will be decided on the basis of all the relevant circumstances.

(i) A motion to strike the testimony of a witness for lack of proper or adequate pretrial disclosure may seek exclusion of the entire testimony, when there was no pretrial disclosure, or may seek exclusion of that portion of the testimony that was not adequately disclosed in accordance with § 2.121(e).

(ii) A motion to strike the testimony of a witness for lack of proper or adequate notice of examination must request the exclusion of the entire testimony of that witness and not only a part of that testimony.

(4) All objections made at the time of an oral examination to the qualifications of the officer taking the deposition, or to the manner of taking it, or to the evidence presented, or to the conduct of any party, and any other objection to the proceedings, shall be noted by the officer upon the deposition. Evidence objected to shall be taken subject to the objections.

(5) When the oral deposition has been transcribed, the deposition transcript shall be carefully read over by the witness or by the officer to the witness, and shall then be signed by the witness in the presence of any officer authorized to administer oaths unless the reading and the signature be waived on the record by agreement of all parties.

(f) *Certification and filing of deposition.*

(1) The officer shall annex to the deposition his or her certificate showing:

(i) Due administration of the oath by the officer to the witness before the commencement of his or her deposition;

(ii) The name of the person by whom the deposition was taken down, and whether, if not taken down by the officer, it was taken down in his or her presence;

(iii) The presence or absence of the adverse party;

(iv) The place, day, and hour of commencing and taking the deposition;

(v) The fact that the officer was not disqualified as specified in Rule 28 of the Federal Rules of Civil Procedure.

(2) If any of the foregoing requirements in paragraph (f)(1) of this section are waived, the certificate shall so state. The officer shall sign the certificate and affix thereto his or her seal of office, if he or she has such a seal. The party taking the deposition, or its attorney or other authorized representative, shall then promptly file the transcript and exhibits in electronic form using ESTTA. If the weight or bulk of an exhibit shall exclude it from such filing or prevent its uploading to ESTTA, it shall be transmitted by the party taking the deposition, or its attorney or other authorized representative, in a separate package marked and addressed as provided in this section, including an explanation as to why it could not be submitted electronically.

(g) *Form of deposition.* (1) The pages of each deposition must be numbered consecutively, and the name of the witness plainly and conspicuously written at the top of each page. A deposition must be in written form. The questions propounded to each witness must be consecutively numbered unless the pages have numbered lines. Each question must be followed by its answer. The deposition transcript must be submitted in full-sized format (one page per sheet), not condensed (multiple pages per sheet).

(2) Exhibits must be numbered or lettered consecutively and each must be marked with the number and title of the case and the name of the party offering the exhibit. Entry and consideration may be refused to improperly marked exhibits.

(3) Each deposition must contain a word index and an index of the names of the witnesses, giving the pages where the words appear in the deposition and where witness examination and cross-examination begin, and an index of the exhibits, briefly describing their nature and giving the pages at which they are introduced and offered in evidence.

(h) *Depositions must be filed.* All depositions which are taken must be duly filed in the Office. On refusal to file, the Office at its discretion will not further hear or consider the contestant with whom the refusal lies; and the Office may, at its discretion, receive and consider a copy of the withheld deposition, attested by such evidence as is procurable.

(i) *Effect of errors and irregularities in depositions.* Rule 32(d)(1), (2), and (3)(A) and (B) of the Federal Rules of Civil Procedure shall apply to errors and irregularities in depositions. Notice will not be taken of merely formal or technical objections which shall not appear to have wrought a substantial injury to the party raising them; and in case of such injury it must be made to appear that the objection was raised at the time specified in said rule.

(j) *Objections to admissibility.* Subject to the provisions of paragraph (i) of this section, objection may be made to receiving in evidence any declaration, affidavit, or deposition, or part thereof, or any other evidence, for any reason which would require the exclusion of the evidence from consideration. Objections to the competency of a witness or to the competency, relevancy, or materiality of testimony must be raised at the time specified in Rule 32(d)(3)(A) of the Federal Rules of Civil Procedure. Such objections may not be considered until final hearing.

(k) *Evidence not considered.* Evidence not obtained and filed in compliance with these sections will not be considered.

■ 24. Amend § 2.124 by revising paragraphs (b)(2), (d)(1), and (f), and adding paragraphs (b)(3), (d)(3) to read as follows:

§ 2.124 Depositions upon written questions.

* * * * *

(b)(1) * * *

(2) A party desiring to take a discovery deposition upon written questions shall serve notice thereof upon each adverse party and shall file a copy of the notice, but not copies of the questions, with the Board. The notice shall state the name and address, if known, of the person whose deposition is to be taken. If the name of the person is not known, a general description sufficient to identify the witness or the particular class or group to which he or she belongs shall be stated in the notice, and the party from whom the discovery deposition is to be taken shall designate one or more persons to be deposed in the same manner as is provided by Rule 30(b)(6) of the Federal Rules of Civil Procedure.

(3) A party desiring to take cross-examination, by written questions, of a witness who has provided testimony by affidavit or declaration shall serve notice thereof upon each adverse party and shall file a copy of the notice, but not copies of the questions, with the Board.

* * * * *

(d)(1) Every notice served on any adverse party under the provisions of paragraph (b) of this section, for the taking of direct testimony, shall be accompanied by the written questions to be propounded on behalf of the party who proposes to take the deposition. Every notice served on any adverse party under the provisions of paragraph (b)(3) of this section, for the taking of cross-examination, shall be accompanied by the written questions to be propounded on behalf of the party who proposes to take the cross-examination. Within twenty days from the date of service of the notice of taking direct testimony, any adverse party may serve cross questions upon the party who proposes to take the deposition. Any party who serves cross questions, whether in response to direct examination questions or under paragraph (b)(3) of this section, shall also serve every other adverse party. Within ten days from the date of service of the cross questions, the party who proposes to take the deposition, or who earlier offered testimony of the witness by affidavit or declaration, may serve redirect questions on every adverse party. Within ten days from the date of service of the redirect questions, any party who served cross questions may serve recross questions upon the party who proposes to take the deposition; any party who serves recross questions shall also serve every other adverse party. Written objections to questions may be served on a party propounding questions; any party who objects shall serve a copy of the objections on every other adverse party. In response to objections, substitute questions may be served on the objecting party within ten days of the date of service of the objections; substitute questions shall be served on every other adverse party.

* * * * *

(3) Service of written questions, responses, and cross-examination questions shall be in accordance with § 2.119(b).

* * * * *

(f) The party who took the deposition shall promptly serve a copy of the transcript, copies of documentary exhibits, and duplicates or photographs of physical exhibits on every adverse party. It is the responsibility of the party who takes the deposition to assure that the transcript is correct (see § 2.125(b)). If the deposition is a discovery deposition, it may be made of record as provided by § 2.120(k). If the deposition is a testimonial deposition, the original, together with copies of documentary exhibits and duplicates or photographs of physical exhibits, shall be filed promptly with the Trademark Trial and Appeal Board.

* * * * *

■ 25. Revise § 2.125 to read as follows:

§ 2.125 Filing and service of testimony.

(a) One copy of the declaration or affidavit prepared in accordance with § 2.123, together with copies of documentary exhibits and duplicates or photographs of physical exhibits, shall be served on each adverse party at the time the declaration or affidavit is submitted to the Trademark Trial and Appeal Board during the assigned testimony period.

(b) One copy of the transcript of each testimony deposition taken in accordance with §§ 2.123 or 2.124, together with copies of documentary exhibits and duplicates or photographs of physical exhibits, shall be served on each adverse party within thirty days after completion of the taking of that testimony. If the transcript with exhibits is not served on each adverse party within thirty days or within an extension of time for the purpose, any adverse party which was not served may have remedy by way of a motion to the Trademark Trial and Appeal Board to reset such adverse party's testimony and/or briefing periods, as may be appropriate. If the deposing party fails to serve a copy of the transcript with exhibits on an adverse party after having been ordered to do so by the Board, the Board, in its discretion, may strike the deposition, or enter judgment as by default against the deposing party, or take any such other action as may be deemed appropriate.

(c) The party who takes testimony is responsible for having all typographical errors in the transcript and all errors of arrangement, indexing and form of the transcript corrected, on notice to each adverse party, prior to the filing of one certified transcript with the Trademark Trial and Appeal Board. The party who takes testimony is responsible for serving on each adverse party one copy of the corrected transcript or, if reasonably feasible, corrected pages to be inserted into the transcript previously served.

(d) One certified transcript and exhibits shall be filed with the Trademark Trial and Appeal Board. Notice of such filing shall be served on each adverse party and a copy of each notice shall be filed with the Board.

(e) Each transcript shall comply with § 2.123(g) with respect to arrangement, indexing and form.

(f) Upon motion by any party, for good cause, the Trademark Trial and Appeal Board may order that any part of an affidavit or declaration or a deposition transcript or any exhibits that directly disclose any trade secret or other confidential research, development, or commercial information may be filed under seal and kept confidential under the provisions of § 2.27(e). If any party or any attorney or agent of a party fails to comply with an order made under this paragraph, the Board may impose any of the sanctions authorized by § 2.120(h).

■ 26. Revise § 2.126 to read as follows:

§ 2.126 Form of submissions to the Trademark Trial and Appeal Board.

(a) Submissions shall be made to the Trademark Trial and Appeal Board via ESTTA.

(1) Text in an electronic submission must be filed in at least 12-point type and double-spaced.

(2) Exhibits pertaining to an electronic submission must be made electronically as an attachment to the submission and must be clear and legible.

(b) In the event that ESTTA is unavailable due to technical problems, or when extraordinary circumstances are present, submissions may be filed in paper form. Submissions in paper form must be accompanied by a Petition to the Director under § 2.146(a)(5), with the fees therefor and the showing required under this paragraph. A paper submission, including exhibits and depositions, must meet the following requirements:

(1) A paper submission must be printed in at least 12-point type and double-spaced, with text on one side only of each sheet;

(2) A paper submission must be 8 to 8.5 inches (20.3 to 21.6 cm.) wide and 11 to 11.69 inches (27.9 to 29.7 cm.) long, and contain no tabs or other such devices extending beyond the edges of the paper;

(3) If a paper submission contains dividers, the dividers must not have any extruding tabs or other devices, and must be on the same size and weight paper as the submission;

(4) A paper submission must not be stapled or bound;

(5) All pages of a paper submission must be numbered and exhibits shall be identified in the manner prescribed in § 2.123(g)(2);

(6) Exhibits pertaining to a paper submission must be filed on paper and comply with the requirements for a paper submission.

(c) To be handled as confidential, submissions to the Trademark Trial and Appeal Board that are confidential in whole or part pursuant to § 2.125(e) must be submitted using the "Confidential" selection available in ESTTA or, where appropriate, under a separate paper cover. Both the submission and its cover must be marked confidential and must identify the case number and the parties. A copy of the submission for public viewing with the confidential portions redacted must be submitted concurrently.

■ 27. Amend § 2.127 by revising paragraphs (a) through (e) to read as follows:

§ 2.127 Motions.

(a) Every motion must be submitted in written form and must meet the requirements prescribed in § 2.126. It shall contain a full statement of the grounds, and shall embody or be accompanied by a brief. Except as provided in paragraph (e)(1) of this section, a brief in response to a motion shall be filed within twenty days from the date of service of the motion unless another time is specified by the Trademark Trial and Appeal Board, or the time is extended by stipulation of the parties approved by the Board, or upon motion granted by the Board, or upon order of the Board. If a motion for an extension is denied, the time for responding to the motion remains as specified under this section, unless otherwise ordered. Except as provided in paragraph (e)(1) of this section, a reply brief, if filed, shall be filed within twenty days from the date of service of the brief in response to the motion. The time for filing a reply brief will not be extended or reopened. The Board will consider no further papers in support of or in opposition to a motion. Neither the brief in support of a motion nor the brief in response to a motion shall exceed twenty-five pages in length in its entirety, including table of contents, index of cases, description of the record, statement of the issues, recitation of the facts, argument, and summary. A reply brief shall not exceed ten pages in length in its entirety. Exhibits submitted in support of or in opposition to a motion are not considered part of the brief for purposes of determining the length of the brief. When a party fails to file a brief in response to a motion, the Board may treat the motion as conceded. An oral hearing will not be held on a motion except on order by the Board.

(b) Any request for reconsideration or modification of an order or decision issued on a motion must be filed within one month from the date thereof. A brief in response must be filed within twenty days from the date of service of the request.

(c) Interlocutory motions, requests, conceded matters, and other matters not actually or potentially dispositive of a proceeding may be acted upon by a single Administrative Trademark Judge of the Trademark Trial and Appeal Board, or by an Interlocutory Attorney or Paralegal of the Board to whom authority to act has been delegated, or by ESTTA. Motions disposed of by orders entitled "By the Trademark Trial and Appeal Board" have the same legal effect as orders by a panel of three Administrative Trademark Judges of the Board.

(d) When any party timely files a potentially dispositive motion, including, but not limited to, a motion to dismiss, a motion for judgment on the pleadings, or a motion for summary judgment, the case is suspended by the Trademark Trial and Appeal Board with respect to all matters not germane to the motion and no party should file any paper which is not germane to the motion except as otherwise may be specified in a Board order. If the case is not disposed of as a result of the motion, proceedings will be resumed pursuant to an order of the Board when the motion is decided.

(e)(1) A party may not file a motion for summary judgment until the party has made its initial disclosures, except for a motion asserting claim or issue preclusion or lack of jurisdiction by the Trademark Trial and Appeal Board. A motion for summary judgment must be filed prior to the deadline for pretrial disclosures for the first testimony period, as originally set or as reset. A motion under Rule 56(d) of the Federal Rules of Civil Procedure, if filed in response to a motion for summary judgment, shall be filed within thirty days from the date of service of the summary judgment motion. The time for filing a motion under Rule 56(d) will not be extended or reopened. If no motion under Rule 56(d) is filed, a brief in response to the motion for summary judgment shall be filed within thirty days from the date of service of the motion unless the time is extended by stipulation of the parties approved by the Board, or upon motion granted by the Board, or upon order of the Board. If a motion for an extension is denied, the time for responding to the motion for summary judgment may remain as specified under this section. A reply brief, if filed, shall be filed within twenty days from the date of service of the brief in response to the motion. The time for filing a reply brief will not be extended or reopened. The Board will consider no further papers in support of or in opposition to a motion for summary judgment.

(2) For purposes of summary judgment only, the Board will consider any of the following, if a copy is provided with the party's brief on the summary judgment motion: Written disclosures or disclosed documents, a discovery deposition or any part thereof with any exhibit to the part that is filed, an interrogatory and answer thereto with any exhibit made part of the answer, a request for production and the documents or things produced in response thereto, or a request for admission and any exhibit thereto and the admission (or a statement that the party from which an admission was requested failed to respond thereto). If any motion for summary judgment is denied, the parties may stipulate that the materials submitted with briefs on the motion shall be considered at trial as trial evidence, which may be supplemented by additional evidence during trial.

■ 28. Amend § 2.128 by revising paragraphs (a)(3) and (b) to read as follows:

§ 2.128 Briefs at final hearing.

(a)(1) * * *

(3) When a party in the position of plaintiff fails to file a main brief, an order may be issued allowing plaintiff until a set time, not less than fifteen days, in which to show cause why the Board should not treat such failure as a concession of the case. If plaintiff fails to file a response to the order, or files a response indicating that plaintiff has lost interest in the case, judgment may be entered against plaintiff. If a plaintiff files a response to the order showing good cause, but does not have any evidence of record and does not move to reopen its testimony period and make a showing of excusable neglect sufficient to support such reopening, judgment may be entered against plaintiff for failure to take testimony or submit any other evidence.

(b) Briefs must be submitted in written form and must meet the requirements prescribed in § 2.126. Each brief shall contain an alphabetical index of cited cases. Without prior leave of the Trademark Trial and Appeal Board, a main brief on the case shall not exceed fifty-five pages in length in its entirety, including the table of contents, index of cases, description of the record, statement of the issues, recitation of the facts, argument, and summary; and a reply brief shall not exceed twenty-five pages in its entirety. Evidentiary objections that may properly be raised in a party's brief on the case may instead be raised in an appendix or by way of a separate statement of objections. The appendix or separate statement is not included within the page limit. Any brief beyond the page limits and any brief with attachments outside the stated requirements may not be considered by the Board.

■ 29. Amend § 2.129 by revising paragraphs (a) through (c) to read as follows:

§ 2.129 Oral argument; reconsideration.

(a) If a party desires to have an oral argument at final hearing, the party shall request such argument by a separate notice filed not later than ten days after the due date for the filing of the last reply brief in the proceeding. Oral arguments will be heard by at least three Administrative Trademark Judges or other statutory members of the Trademark Trial and Appeal Board at the time specified in the notice of hearing. If any party appears at the specified time, that party will be heard. Parties and members of the Board may attend in person or, at the discretion of the Board, remotely. If the Board is prevented from hearing the case at the specified time, a new hearing date will be set. Unless otherwise permitted, oral arguments in an inter partes case will be limited to thirty minutes for each party. A party in the position of plaintiff may reserve part of the time allowed for oral argument to present a rebuttal argument.

(b) The date or time of a hearing may be reset, so far as is convenient and proper, to meet the wishes of the parties and their attorneys or other authorized representatives. The Board may, however, deny a request to reset a hearing date for lack of good cause or if multiple requests for rescheduling have been filed.

(c) Any request for rehearing or reconsideration or modification of a decision issued after final hearing must be filed within one month from the date of the decision. A brief in response must be filed within twenty days from the date of service of the request. The times specified may be extended by order of the Trademark Trial and Appeal Board on motion for good cause.

* * * * *

■ 30. Revise § 2.130 to read as follows:

§ 2.130 New matter suggested by the trademark examining attorney.

If, while an inter partes proceeding involving an application under section 1 or 44 of the Act is pending, facts appear which, in the opinion of the examining attorney, render the mark in the application unregistrable, the examining attorney should request that the Board remand the application. The Board may suspend the proceeding and remand the application to the trademark examining attorney for an ex parte determination of the question of registrability. A copy of the trademark examining attorney's final action will be furnished to the parties to the inter partes proceeding following the final determination of registrability by the trademark examining attorney or the Board on appeal. The Board will consider the application for such further inter partes action as may be appropriate.

■ 31. Revise § 2.131 read as follows:

§ 2.131 Remand after decision in inter partes proceeding.

If, during an inter partes proceeding involving an application under section 1 or 44 of the Act, facts are disclosed which appear to render the mark unregistrable, but such matter has not been tried under the pleadings as filed by the parties or as they might be deemed to be amended under Rule 15(b) of the Federal Rules of Civil Procedure to conform to the evidence, the Trademark Trial and Appeal Board, in lieu of determining the matter in the decision on the proceeding, may remand the application to the trademark examining attorney for reexamination in the event the applicant ultimately prevails in the inter partes proceeding. Upon remand, the trademark examining attorney shall reexamine the application in light of the matter referenced by the Board. If, upon reexamination, the trademark examining attorney finally refuses registration to the applicant, an appeal may be taken as provided by §§ 2.141 and 2.142.

■ 32. Amend § 2.132 by revising paragraphs (a) and (b) to read as follows:

§ 2.132 Involuntary dismissal for failure to take testimony.

(a) If the time for taking testimony by any party in the position of plaintiff has expired and it is clear to the Board from the proceeding record that such party has not taken testimony or offered any other evidence, the Board may grant judgment for the defendant. Also, any party in the position of defendant may, without waiving the right to offer evidence in the event the motion is denied, move for dismissal on the ground of the failure of the plaintiff to prosecute. The party in the position of plaintiff shall have twenty days from the date of service of the motion to show cause why judgment should not be rendered dismissing the case. In the absence of a showing of excusable neglect, judgment may be rendered against the party in the position of plaintiff. If the motion is denied, testimony periods will be reset for the party in the position of defendant and for rebuttal.

(b) If no evidence other than Office records showing the current status and title of plaintiff's pleaded registration(s) is offered by any party in the position of plaintiff, any party in the position of defendant may, without waiving the right to offer evidence in the event the motion is denied, move for dismissal on the ground that upon the law and the facts the party in the position of plaintiff has shown no right to relief. The party in the position of plaintiff shall have twenty days from the date of service of the motion to file a brief in response to the motion. The Trademark Trial and Appeal Board may render judgment against the party in the position of plaintiff, or the Board may decline to render judgment until all testimony periods have passed. If judgment is not rendered on the motion to dismiss, testimony periods will be reset for the party in the position of defendant and for rebuttal.

* * * * *

■ 33. Amend § 2.134 by revising paragraph (b) to read as follows:

§ 2.134 Surrender or voluntary cancellation of registration.

* * * * *

(b) After the commencement of a cancellation proceeding, if it comes to the attention of the Trademark Trial and Appeal Board that the respondent has permitted its involved registration to be cancelled under section 8 or section 71 of the Act of 1946, or has failed to renew its involved registration under section 9 of the Act of 1946, or has allowed its registered extension of protection to expire under section 70(b) of the Act of 1946, an order may be issued allowing respondent until a set time, not less than fifteen days, in which to show cause why such cancellation, failure to renew, or expiration should not be deemed to be the equivalent of a cancellation by request of respondent without the consent of the adverse party and should not result in entry of judgment against respondent as provided by paragraph (a) of this section. In the absence of a showing of good and sufficient cause, judgment may be entered against respondent as provided by paragraph (a) of this section.

■ 34. Revise § 2.136 to read as follows:

§ 2.136 Status of application on termination of proceeding.

After the Board has issued its decision in an opposition or concurrent use proceeding, and after the time for filing any appeal of the decision has expired, or any appeal that was filed has been decided and the Board's decision affirmed, the proceeding will be terminated by the Board. On termination of an opposition or concurrent use proceeding, if the judgment is not adverse to the applicant, the application returns to the status it had before the institution of the proceeding. If the judgment is adverse to the applicant, the application stands refused without further action and all proceedings thereon are considered terminated.

■ 35. Amend § 2.142 by revising paragraphs (b), (c), (d), (e), and (f)(1) through (f)(4) and (f)(6) to read as follows:

§ 2.142 Time and manner of ex parte appeals.

* * * * *

(b)(1) The brief of appellant shall be filed within sixty days from the date of appeal. If the brief is not filed within the time allowed, the appeal may be dismissed. The examining attorney shall, within sixty days after the brief of appellant is sent to the examining attorney, file with the Trademark Trial and Appeal Board a written brief answering the brief of appellant and shall mail a copy of the brief to the appellant. The appellant may file a reply brief within twenty days from the date of mailing of the brief of the examining attorney.

(2) Briefs must be submitted in written form and must meet the requirements prescribed in § 2.126. Each brief shall contain an alphabetical index

of cited cases. Without prior leave of the Trademark Trial and Appeal Board, a brief shall not exceed twenty-five pages in length in its entirety, including the table of contents, index of cases, description of the record, statement of the issues, recitation of the facts, argument, and summary. A reply brief from the appellant, if any, shall not exceed ten pages in length in its entirety. Unless authorized by the Board, no further briefs are permitted.

(3) Citation to evidence in briefs should be to the documents in the electronic application record by date, the name of the paper under which the evidence was submitted, and the page number in the electronic record.

(c) All requirements made by the examining attorney and not the subject of appeal shall be complied with prior to the filing of an appeal, and the statement of issues in the brief should note such compliance.

(d) Evidence shall not be submitted after the filing of a notice of appeal. If the appellant or the examining attorney desires to introduce additional evidence after an appeal is filed, the appellant or the examining attorney must submit a request to the Board to suspend the appeal and to remand the application for further examination.

(e)(1) If the appellant desires an oral hearing, a request should be made by a separate notice filed not later than ten days after the due date for a reply brief. Oral argument will be heard by at least three Administrative Trademark Judges or other statutory members of the Trademark Trial and Appeal Board at the time specified in the notice of hearing, which may be reset if the Board is prevented from hearing the argument at the specified time or, so far as is convenient and proper, to meet the wish of the appellant or the appellant's attorney or other authorized representative. Appellants, examining attorneys, and members of the Board may attend in person or, at the discretion of the Board, remotely.

(2) If the appellant requests an oral argument, the examining attorney who issued the refusal of registration or the requirement from which the appeal is taken, or in lieu thereof another examining attorney as designated by a supervisory or managing attorney, shall present an oral argument. If no request for an oral hearing is made by the appellant, the appeal will be decided on the record and briefs.

(3) Oral argument will be limited to twenty minutes by the appellant and ten minutes by the examining attorney. The appellant may reserve part of the time allowed for oral argument to present a rebuttal argument.

(f)(1) If, during an appeal from a refusal of registration, it appears to the Trademark Trial and Appeal Board that an issue not previously raised may render the mark of the appellant unregistrable, the Board may suspend the appeal and remand the application to the examining attorney for further examination to be completed within the time set by the Board.

(2) If the further examination does not result in an additional ground for refusal of registration, the examining attorney shall promptly return the application to the Board, for resumption of the appeal, with a written statement that further examination did not result in an additional ground for refusal of registration.

(3) If the further examination does result in an additional ground for refusal of registration, the examining attorney and appellant shall proceed as provided by §§ 2.61, 2.62, and 2.63. If the ground for refusal is made final, the examining attorney shall return the application to the Board, which shall thereupon issue an order allowing the appellant sixty days from the date of the order to file a supplemental brief limited to the additional ground for the refusal of registration. If the supplemental brief is not filed by the appellant within the time allowed, the appeal may be dismissed.

(4) If the supplemental brief of the appellant is filed, the examining attorney shall, within sixty days after the supplemental brief of the appellant is sent to the examining attorney, file with the Board a written brief answering the supplemental brief of appellant and shall mail a copy of the brief to the appellant. The appellant may file a reply brief within twenty days from the date of mailing of the brief of the examining attorney.

* * * * *

(6) If, during an appeal from a refusal of registration, it appears to the examining attorney that an issue not involved in the appeal may render the mark of the appellant unregistrable, the examining attorney may, by written request, ask the Board to suspend the appeal and to remand the application to the examining attorney for further examination. If the request is granted, the examining attorney and appellant shall proceed as provided by §§ 2.61, 2.62, and 2.63. After the additional ground for refusal of registration has been withdrawn or made final, the examining attorney shall return the application to the Board, which shall resume proceedings in the appeal and take further appropriate action with respect thereto.

* * * * *

■ 36. Add and reserve § 2.143 to read as follows:

§ 2.143 [Reserved]

■ 37. Revise § 2.145 to read as follows:

§ 2.145 Appeal to court and civil action.

(a) *For an Appeal to the United States Court of Appeals for the Federal Circuit under section 21(a) of the Act.* (1) An applicant for registration, or any party to an interference, opposition, or cancellation proceeding or any party to an application to register as a concurrent user, hereinafter referred to as inter partes proceedings, who is dissatisfied with the decision of the Trademark Trial and Appeal Board and any registrant who has filed an affidavit or declaration under section 8 or section 71 of the Act or who has filed an application for renewal and is dissatisfied with the decision of the Director (§§ 2.165, 2.184), may appeal to the United States Court of Appeals for the Federal Circuit. It is unnecessary to request reconsideration by the Board before filing any such appeal; however, a party requesting reconsideration must do so before filing a notice of appeal.

(2) In all appeals under section 21(a), the appellant must take the following steps:

(i) File the notice of appeal with the Director, addressed to the Office of the General Counsel, as provided in § 104.2 of this chapter;

(ii) File a copy of the notice of appeal with the Trademark Trial and Appeal Board via ESTTA; and

(iii) Comply with the requirements of the Federal Rules of Appellate Procedure and Rules for the United States Court of Appeals for the Federal Circuit, including serving the requisite number of copies on the Court and paying the requisite fee for the appeal.

(3) *Additional requirements.* (i) The notice of appeal shall specify the party or parties taking the appeal and shall designate the decision or part thereof appealed from.

(ii) In inter partes proceedings, the notice of appeal must be served as provided in § 2.119.

(b) *For a notice of election under section 21(a)(1) to proceed under section 21(b) of the Act.* (1) Any applicant or registrant in an ex parte case who takes an appeal to the United States Court of Appeals for the Federal Circuit waives any right to proceed under section 21(b) of the Act.

(2) If an adverse party to an appeal taken to the United States Court of Appeals for the Federal Circuit by a

defeated party in an inter partes proceeding elects to have all further review proceedings conducted under section 21(b) of the Act, that party must take the following steps:

(i) File a notice of election with the Director, addressed to the Office of the General Counsel, as provided in § 104.2 of this chapter;

(ii) File a copy of the notice of election with the Trademark Trial and Appeal Board via ESTTA; and

(iii) Serve the notice of election as provided in § 2.119.

(c) *For a civil action under section 21(b) of the Act.* (1) Any person who may appeal to the United States Court of Appeals for the Federal Circuit (paragraph (a) of this section), may have remedy by civil action under section 21(b) of the Act. It is unnecessary to request reconsideration by the Board before filing any such civil action; however, a party requesting reconsideration must do so before filing a civil action.

(2) Any applicant or registrant in an ex parte case who seeks remedy by civil action under section 21(b) of the Act must serve the summons and complaint pursuant to Rule 4(i) of the Federal Rules of Civil Procedure with the copy to the Director addressed to the Office of the General Counsel as provided in § 104.2 of this chapter. A copy of the complaint must also be filed with the Trademark Trial and Appeal Board via ESTTA.

(3) The party initiating an action for review of a Board decision in an inter partes case under section 21(b) of the Act must file notice thereof with the Trademark Trial and Appeal Board via ESTTA no later than five business days after filing the complaint in the district court. The notice must identify the civil action with particularity by providing the case name, case number, and court in which it was filed. A copy of the complaint may be filed with the notice. Failure to file the required notice can result in termination of the Board proceeding and further action within the United States Patent and Trademark Office consistent with the final Board decision.

(d) *Time for appeal or civil action.* (1) *For an appeal under section 21(a).* The notice of appeal filed pursuant to section 21(a) of the Act must be filed with the Director no later than sixty-three (63) days from the date of the final decision of the Trademark Trial and Appeal Board or the Director. Any notice of cross-appeal is controlled by Rule 4(a)(3) of the Federal Rules of Appellate Procedure, and any other requirement imposed by the Rules of the United States Court of Appeals for the Federal Circuit.

(2) *For a notice of election under 21(a)(1) and a civil action pursuant to such notice of election.* The times for filing a notice of election under section 21(a)(1) and for commencing a civil action pursuant to a notice of election are governed by section 21(a)(1) of the Act.

(3) *For a civil action under section 21(b).* A civil action must be commenced no later than sixty-three (63) days after the date of the final decision of the Trademark Trial and Appeal Board or Director.

(4) *Time computation.* (i) If a request for rehearing or reconsideration or modification of the Board decision is filed within the time specified in §§ 2.127(b), 2.129(c) or 2.144, or within any extension of time granted thereunder, the time for filing an appeal or commencing a civil action shall expire no later than sixty-three (63) days after action on the request.

(ii) *Holidays.* The times specified in this section in days are calendar days. If the last day of time specified for an appeal, notice of election, or commencing a civil action falls on a Saturday, Sunday or Federal holiday in the District of Columbia, the time is extended to the next day which is neither a Saturday, Sunday nor a Federal holiday in the District of Columbia pursuant to § 2.196.

(e) *Extension of time.* (1) The Director, or the Director's designee, may extend the time for filing an appeal, or commencing a civil action, upon written request if:

(i) Requested before the expiration of the period for filing an appeal or commencing a civil action, and upon a showing of good cause; or

(ii) Requested after the expiration of the period for filing an appeal or commencing a civil action, and upon a showing that the failure to act was the result of excusable neglect.

(2) The request must be filed as provided in § 104.2 of this chapter and addressed to the attention of the Office of the Solicitor. A copy of the request should also be filed with the Trademark Trial and Appeal Board via ESTTA.

■ 38. Amend § 2.190 by revising paragraphs (a) through (c) to read as follows:

§ 2.190 Addresses for trademark correspondence with the United States Patent and Trademark Office.

(a) *Trademark correspondence. In general.* All trademark-related documents filed on paper, except documents sent to the Assignment Recordation Branch for recordation; requests for copies of trademark documents; and certain documents filed under the Madrid Protocol as specified in paragraph (e) of this section, should be addressed to: Commissioner for Trademarks, P.O. Box 1451, Alexandria, VA 22313–1451. All trademark-related documents may be delivered by hand, during the hours the Office is open to receive correspondence, to the Trademark Assistance Center, James Madison Building—East Wing, Concourse Level, 600 Dulany Street, Alexandria, Virginia 22314.

(b) *Electronic trademark documents.* An applicant may transmit a trademark document through TEAS, at *http://www.uspto.gov.* Documents that relate to proceedings before the Trademark Trial and Appeal Board shall be filed directly with the Board electronically through ESTTA, at *http://estta.uspto.gov.*

(c) *Trademark Assignments.* Requests to record documents in the Assignment Recordation Branch may be filed through the Office's Web site, at *http://www.uspto.gov.* Paper documents and cover sheets to be recorded in the Assignment Recordation Branch should be addressed to: Mail Stop Assignment Recordation Services, Director of the United States Patent and Trademark Office, P.O. Box 1450, Alexandria, Virginia 22313–1450. See § 3.27 of this chapter.

* * * * *

■ 39. Revise § 2.191 to read as follows:

§ 2.191 Business to be transacted in writing.

All business with the Office should be transacted in writing. The personal appearance of applicants or their representatives at the Office is unnecessary. The action of the Office will be based exclusively on the written record. No attention will be paid to any alleged oral promise, stipulation, or understanding in relation to which there is disagreement or doubt. The Office encourages parties to file documents through TEAS wherever possible, or through ESTTA for documents in proceedings before the Trademark Trial and Appeal Board.

Dated: March 18, 2016.

Michelle K. Lee,

Under Secretary of Commerce for Intellectual Property and Director, United States Patent and Trademark Office.

[FR Doc. 2016–06672 Filed 4–1–16; 8:45 am]

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Part III

Department of Commerce

National Oceanic and Atmospheric Administration

Takes of Marine Mammals Incidental to Specified Activities; Taking Marine Mammals Incidental to a Pier Construction and Support Facilities Project, Port Angeles, WA; Notice

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XE297

Takes of Marine Mammals Incidental to Specified Activities; Taking Marine Mammals Incidental to a Pier Construction and Support Facilities Project, Port Angeles, WA

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice; proposed incidental harassment authorization; request for comments.

SUMMARY: NMFS has received a request from the U.S. Navy (Navy) for authorization to take marine mammals incidental to construction activities as part of a pier construction and support facilities project. Pursuant to the Marine Mammal Protection Act (MMPA), NMFS is requesting comments on its proposal to issue an incidental harassment authorization (IHA) to the Navy to incidentally take marine mammals, by Level B Harassment only, during the specified activity.

DATES: Comments and information must be received no later than May 4, 2016.

ADDRESSES: Comments on the application should be addressed to Jolie Harrison, Supervisor, Incidental Take Program, Permits and Conservation Division, Office of Protected Resources, National Marine Fisheries Service. Physical comments should be sent to 1315 East-West Highway, Silver Spring, MD 20910 and electronic comments should be sent to *ITP.McCue@noaa.gov*.

Instructions: NMFS is not responsible for comments sent by any other method, to any other address or individual, or received after the end of the comment period. Comments received electronically, including all attachments, must not exceed a 25-megabyte file size. Attachments to electronic comments will be accepted in Microsoft Word or Excel or Adobe PDF file formats only. All comments received are a part of the public record and will generally be posted to the Internet at *www.nmfs.noaa.gov/pr/permits/incidental.htm* without change. All personal identifying information (*e.g.*, name, address) voluntarily submitted by the commenter may be publicly accessible. Do not submit confidential business information or otherwise sensitive or protected information.

FOR FURTHER INFORMATION CONTACT: Laura McCue, Office of Protected Resources, NMFS, (301) 427–8401.

SUPPLEMENTARY INFORMATION:

Availability

An electronic copy of the Navy's application and supporting documents, as well as a list of the references cited in this document, may be obtained by visiting the Internet at: *www.nmfs.noaa.gov/pr/permits/incidental.htm*. In case of problems accessing these documents, please call the contact listed above (see **FOR FURTHER INFORMATION CONTACT**).

National Environmental Policy Act (NEPA)

The Navy has prepared a draft Environmental Assessment (*Pier and Support Facilities for Transit Protection System at U.S. Coast Guard Air Station/Sector Field Office Port Angeles, WA*) in accordance with the National Environmental Policy Act (NEPA) and the regulations published by the Council on Environmental Quality. It is posted at the aforementioned site. NMFS will independently evaluate the EA and determine whether or not to adopt it. We may prepare a separate NEPA analysis and incorporate relevant portions of Navy's EA by reference. Information in the Navy's application, EA, and this notice collectively provide the environmental information related to proposed issuance of this IHA for public review and comment. We will review all comments submitted in response to this notice as we complete the NEPA process, including a decision of whether to sign a Finding of No Significant Impact (FONSI), prior to a final decision on the incidental take authorization request.

Background

Sections 101(a)(5)(A) and (D) of the MMPA (16 U.S.C. 1361 *et seq.*) direct the Secretary of Commerce to allow, upon request by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified area, the incidental, but not intentional, taking of small numbers of marine mammals, providing that certain findings are made and the necessary prescriptions are established.

The incidental taking of small numbers of marine mammals may be allowed only if NMFS (through authority delegated by the Secretary) finds that the total taking by the specified activity during the specified time period will (i) have a negligible impact on the species or stock(s) and (ii) not have an unmitigable adverse impact on the availability of the species or stock(s) for subsistence uses (where relevant). Further, the permissible methods of taking and requirements pertaining to the mitigation, monitoring and reporting of such taking must be set forth, either in specific regulations or in an authorization.

The allowance of such incidental taking under section 101(a)(5)(A), by harassment, serious injury, death, or a combination thereof, requires that regulations be established. Subsequently, a Letter of Authorization may be issued pursuant to the prescriptions established in such regulations, providing that the level of taking will be consistent with the findings made for the total taking allowable under the specific regulations. Under section 101(a)(5)(D), NMFS may authorize such incidental taking by harassment only, for periods of not more than one year, pursuant to requirements and conditions contained within an IHA. The establishment of prescriptions through either specific regulations or an authorization requires notice and opportunity for public comment.

NMFS has defined "negligible impact" in 50 CFR 216.103 as ". . . an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival." Except with respect to certain activities not pertinent here, section 3(18) of the MMPA defines "harassment" as: ". . . any act of pursuit, torment, or annoyance which (i) has the potential to injure a marine mammal or marine mammal stock in the wild; or (ii) has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering." The former is termed Level A harassment and the latter is termed Level B harassment.

Summary of Request

On September 11, 2015, we received a request from the Navy for authorization to take marine mammals incidental to pile driving associated with the construction of a pier and support facilities at the U.S. Coast Guard (USCG) Air Station/Sector Field Office Port Angeles (AIRSTA/SFO Port Angeles), located in Port Angeles Harbor on the Ediz Hook peninsula, Port Angeles. The Navy submitted a revised version of the request on February 19, 2016, which we deemed adequate and complete on February 22, 2016.

The Navy proposes to initiate this multi-year project, involving impact and vibratory pile driving conducted within the approved in-water work windows. The proposed activity would occur from November 1, 2016 to October 31, 2017. In water work is expected to begin on November 1, 2016 in order to minimize impacts to an Atlantic Salmon net pen farm located in close proximity to the project area. In water work will conclude on February 15, 2017, and begin again from July 16 to October 31, 2017.

The use of both vibratory and impact pile driving is expected to produce underwater sound at levels that have the potential to result in behavioral harassment of marine mammals. Take, by Level B Harassment only, has been requested for individuals of five species of marine mammals (harbor porpoise [*Phocoena phocoena*], harbor seal [*Phoca vitulina*], Northern elephant seal [*Mirounga angustirostris*], Steller sea lion [*Eumatopias jubatus*], and California sea lion [*Zalophus californianus*]).

Description of the Specified Activity

Overview

The Navy has increased security for in-transit Fleet Ballistic Missile Submarines (SSBNs) in inland marine waters of northern Washington by establishing a Transit Protection System (TPS) that relies on the use of multiple escort vessels. The purpose of the Pier and Support Facilities for TPS project is to provide a staging location for TPS vessels and crews that escort incoming and outgoing SSBNs between dive/surface points in the Strait of Juan de Fuca and Naval Base (NAVBASE) Kitsap Bangor.

Specific activities that can be expected to result in the incidental taking of marine mammals are limited to the driving of steel piles used for installation of the trestle/fixed pier/floating docks, and the removal of existing piles.

Vibratory pile driving is the preferred method for production piles and would be the initial starting point for each installation; however, impact pile driving methods may be necessary based on substrate conditions. Once a pile hits "refusal," which is where hard solid or dense substrate (*e.g.*, gravel, boulders) prevents further pile movement by vibratory methods, impact pile driving is used to drive the pile to depth.

All piles would be driven with a vibratory hammer for their initial embedment depths, while select piles may be finished with an impact hammer for proofing, as necessary. There would be no concurrent pile driving or multiple hammers operating simultaneously. Proofing involves striking a driven pile with an impact hammer to verify that it provides the required load-bearing capacity, as indicated by the number of hammer blows per foot of pile advancement. Sound attenuation measures (*i.e.*, bubble curtain) would be used during all impact hammer operations.

Dates and Duration

Under the proposed action, in-water construction is anticipated to begin in 2016 and require two in-water work window seasons. The allowable season for in-water work, including pile driving, at AIRSTA/SFO Port Angeles is November 1, 2016 through February 15, 2017, and July 16, 2017 through October 31, 2017, a window established by the Washington Department of Fish and Wildlife in coordination with NMFS and the U.S. Fish and Wildlife Service (USFWS) to protect juvenile salmon (*Oncorhynchus spp.*) and bull trout (*Salvelinus confluentus*). Overall, a maximum of 75 days of pile driving are anticipated within these in-water work windows. All in-water construction activities will occur during daylight hours (sunrise to sunset) except from July 16 to February 15 when impact pile driving/removal will only occur starting 2 hours after sunrise and ending 2 hours before sunset, to protect foraging marbled murrelets (an Endangered Species Act [ESA]-listed bird under the jurisdiction of USFWS) during nesting season (April 1–September 23). Other construction (not in-water) may occur between 7 a.m. and 10 p.m., year-round.

Specific Geographic Region

AIRSTA/SFO Port Angeles is located in the Strait of Juan de Fuca, approximately 62 miles (100 km) east of Cape Flattery, and 63 miles (102 km) northwest of Seattle, Washington on the Olympic Peninsula (see Figure 1–1 in the Navy's application). The Strait of Juan de Fuca is a wide waterway stretching from the Pacific Ocean to the Salish Sea. The strait is 95 miles (153-km) long, 15.5 miles (25 km) wide, and has depths ranging from 180 m to 250 m on the pacific coast and 55 m at the sill. Please see Section 2 of the Navy's application for detailed information about the specific geographic region, including physical and oceanographic characteristics.

Detailed Description of Activities

The purpose of the Pier and Support Facilities for TPS project (the project) is to provide a staging location for TPS vessels and crews that escort incoming and outgoing SSBNs between dive/surface points in the Strait of Juan de Fuca and Naval Base (NAVBASE) Kitsap Bangor. The Navy has increased security for in-transit Fleet Ballistic Missile Submarines (SSBNs) in inland marine waters of northern Washington by establishing a Transit Protection System (TPS) that relies on the use of multiple escort vessels. Construction of the pier and support facilities is grouped into three broad categories: (1) Site Work Activities (2) Construction of Upland Facilities (Alert Forces Facility [AFF] and Ready Service Armory [RSA]), and (3) Construction of Trestle/Fixed Pier/Floating Docks.

The trestle, fixed pier, and floating docks would result in a permanent increase in overwater coverage of 25,465 square-feet (ft^2) (2,366 square meters [m^2]). An estimated 745 ft^2 (69 m^2) of benthic seafloor would be displaced from the installation of the 144 permanent steel piles. The fixed pier will lie approximately 354 ft (108 m) offshore at water depths between −40 ft (−12 m) and −63 ft (19 m) mean lower low water (MLLW). It would be constructed of precast concrete and be approximately 160 feet long and 42 feet wide (49 m by 13 m). The fixed pier would have two mooring dolphins that connect to the fixed pier via a catwalk, and would be supported by 87 steel piles and result in 10,025 ft^2 (931 m^2) of permanent overwater coverage. The floating docks including brows would be supported by 21 steel piles and result in 5,380 ft^2 (500 m^2) of permanent overwater coverage. The trestle would provide vehicle and pedestrian access to the pier and convey utilities to the pier. It would be installed between +7 ft (2 m) MLLW and −45 ft (−14 m) MLLW. The trestle would be approximately 355 feet long (108 m) long and 24 feet (7 m) wide and constructed of precast concrete. The trestle would be designed to support a 50 pound per square foot (psf) (244 kilograms [kg] per square m) live load or a utility trailer with a total load of 3,000 pounds (1,360 kg), and would be supported by 36 steel piles and result in 10,060 ft^2 (935 m^2) of permanent overwater coverage.

For the entire project, pile installation would include the installation and removal of 80 temporary indicator piles, installation of 60 permanent sheet piles, and installation of 144 permanent steel piles (Table 1). The indicator piles are required to determine if required bearing capacities will be achieved with the production piles, and to assess whether the correct vibratory and impact hammers are being used. The process will be to vibrate the piles to within 5 ft (1.5 m) of the target embedment depth required for the project, let the piles rest in place for a day, and then impact drive the piles the final 5 ft (1.5 m). If the indicator piles cannot be successfully vibrated in, then a larger hammer will be used for the production piles. The impact driving will also provide an indication of bearing capacity via proofing. Each indicator pile would then be vibratory extracted (removed) using a vibratory hammer.

A maximum of 75 days of pile driving may occur. Table 1 summarizes the number and nature of piles required for the entire project.

TABLE 1—SUMMARY OF PILES REQUIRED FOR PIER CONSTRUCTION

[In total]

Feature	Quantity and size
Total number of in-water piles.	Up to 284.*
Indicator temporary ...	24-in: 80.
Sheet pile wall	PZC13 Steel sheet piles: 60.
Trestle	18-in: 16, 24-in: 12, 36-in: 8.
Fixed pier piles	24-in: 28, 30-in: 49, 36-in: 10.
Floating docks	24-in: 3, 30-in: 6, 36-in: 12.
Maximum pile driving duration.	75 days (under one-year IHA).

* Pile installation would include the installation and removal of 80 temporary indicator piles, installation of 60 permanent sheet piles, and installation of 144 permanent steel piles.

Pile installation will utilize vibratory pile drivers to the greatest extent possible, and the Navy anticipates that most piles will be able to be vibratory driven to within several feet of the required depth. Pile drivability is, to a large degree, a function of soil conditions and the type of pile hammer. Most piles should be able to be driven with a vibratory hammer to proper embedment depth. However, difficulties during pile driving may be encountered as a result of obstructions, such as rocks or boulders, which may exist throughout the project area. If difficult driving conditions occur, increased usage of an impact hammer will occur.

Pile production rates are dependent upon required embedment depths, the potential for encountering difficult driving conditions, and the ability to drive multiple piles without a need to relocate the driving rig. If difficult subsurface driving conditions (*e.g.,* cobble/boulder zones) are encountered that cause refusal with the vibratory equipment, it may be necessary to use an impact hammer to drive some piles for the remaining portion of their required depth. The worst-case scenario is that a pile would be driven for its entire length using an impact hammer. Given the uncertainty regarding the types and quantities of boulders or cobbles that may be encountered, and the depth at which they may be encountered, the number of strikes necessary to drive a pile its entire length would vary. All piles driven or struck with an impact hammer would be surrounded by a bubble curtain over the full water column to minimize in-water sound. Pile production rate (number of piles driven per day) is affected by many factors: Size, type (vertical versus angled), and location of piles; weather; number of driver rigs operating; equipment reliability; geotechnical (subsurface) conditions; and work stoppages for security or environmental reasons (such as presence of marine mammals).

Description of Marine Mammals in the Area of the Specified Activity

There are eleven marine mammal species with recorded occurrence in the Strait of Juan de Fuca, including seven cetaceans and four pinnipeds. Of these eleven species, only five are expected to have a reasonable potential to be in the vicinity of the project site. These species are harbor porpoise (*Phocoena phocoena*), harbor seal (*Phoca vitulina*), Northern elephant seal (*Mirounga angustirostris*), Steller sea lion (*Eumatopias jubatus*), and California sea lion (*Zalophus californianus*). Harbor seals occur year round throughout the nearshore inland waters of Washington. Harbor seals are expected to occur year round in Port Angeles Harbor, with a nearby haul-out site on a log boom located approximately 1.7 miles (2.7 km) west of the project site and another haul-out site 1.3 miles (2.1 km) south of the project. Steller sea lions and California sea lions may occur in the area, but there are no site-specific surveys on these species. Harbor porpoises and Northern elephant seal are rare through the project area. The Dall's porpoise (*Phocoenoides dalli dalli*), humpback whale (*Megaptera novaeangliae*), minke whale (*Balaenoptera acutorostrata*), gray whale (*Eschrichtius robustus*), Pacific white-sided dolphin (*Lagenorhynchus obliquidens*), and killer whales (*Orcinus orca*) are extremely rare in Port Angeles Harbor, and we do not believe there is a reasonable likelihood of their occurrence in the project area during the proposed period of validity for this IHA.

We have reviewed the Navy's detailed species descriptions, including life history information, for accuracy and completeness and refer the reader to Sections 3 and 4 of the Navy's application instead of reprinting the information here. Please also refer to NMFS' Web site (*www.nmfs.noaa.gov/pr/species/mammals*) for generalized species accounts and to the Navy's Marine Resource Assessment for the Pacific Northwest, which documents and describes the marine resources that occur in Navy operating areas of the Pacific Northwest, including Strait of Juan de Fuca (DoN, 2006). The document is publicly available at *www.navfac.navy.mil/products_and_services/ev/products_and_services/marine_resources/marine_resource_assessments.html* (accessed February 1, 2016).

Table 2 lists the eleven marine mammal species with expected potential for occurrence in the vicinity of AIRSTA/SFO Port Angeles during the project timeframe, and summarizes key information regarding stock status and abundance. Taxonomically, we follow Committee on Taxonomy (2014). Please see NMFS' Stock Assessment Reports (SAR), available at *www.nmfs.noaa.gov/pr/sars,* for more detailed accounts of these stocks' status and abundance. The harbor seal, California sea lion, Northern elephant seal, Dall's porpoise, Pacific white-sided dolphins, harbor porpoise, southern resident killer whale, humpback whale, minke whale, and gray whale are addressed in the Pacific SARs (*e.g.,* Carretta *et al.,* 2015), while the Steller sea lion and West coast transient killer whale are treated in the Alaska SARs (*e.g.,* Muto and Angliss, 2015).

In the species accounts provided here, we offer a brief introduction to the species and relevant stock as well as available information regarding population trends and threats, and describe any information regarding local occurrence.

TABLE 2—MARINE MAMMALS POTENTIALLY PRESENT IN THE VICINITY OF AIRSTA/SFO PORT ANGELES

Species	Stock	ESA/MMPA status; Strategic (Y/N)[1]	Stock abundance (CV, N_{min}, most recent abundance survey)[2]	PBR[3]	Annual M/SI[4]	Relative occurrence in Strait of Juan de Fuca; season of occurrence
Order Cetartiodactyla—Cetacea—Superfamily Odontoceti (toothed whales, dolphins, and porpoises)						
Family Phocoenidae (porpoises)						
Harbor porpoise	Washington inland waters[5].	-; N	10,682 (0.38; 7,841; 2003).	63	≥2.2	Possible regular presence in the Strait of Juan de Fuca, but unlikely near PAH; year-round.
Dall's porpoise	CA/OR/WA	-; N	42,000 (0.33; 32,106; 2008).	257	>0.4	Rare.
Order Cetartiodactyla—Cetacea—Superfamily Odontoceti (toothed whales, dolphins, and porpoises)						
Family Delphinidae (dolphins)						
Pacific white-sided dolphin.	CA/OR/WA	-; N	26,930 (0.28; 21,406; 2008).	171	17.8	Rare.
Killer whale	West coast transient	-; N	243 (n/a; 243; 2009)	2.4	0	Unlikely.
	Southern resident	E; S	78 (n/a; 78; 2014)	0.14	0	
Order Cetartiodactyla—Cetacea—Superfamily Odontoceti (toothed whales, dolphins, and porpoises)						
Family Balaenopteridae						
Humpback whale	CA/OR/WA	E; S	1,918 (0.03; 1,855; 2011).	11	>5.5	Unlikely.
Minke whale	CA/OR/WA	-; N	478 (1.36; 202; 2008)	2	0	Unlikely.
Order Cetartiodactyla—Cetacea—Superfamily Odontoceti (toothed whales, dolphins, and porpoises)						
Family Eschrichtiidae						
Gray whale	Eastern N. Pacific	-; N	20,990 (0.05; 20,125; 2011).	624	132	Unlikely.
Order Carnivora—Superfamily Pinnipedia						
Family Otariidae (eared seals and sea lions)						
California sea lion	U.S.	-; N	296,750 (n/a; 153,337; 2011).	9,200	389	Seasonal/common; Fall to late spring (Aug to Jun).
Steller sea lion	Eastern U.S.	-; S	60,131- 74,448 (n/a; 36,551; 2013)[6].	[7]1,645	92.3	Seasonal/occasional; Fall to late spring (Sep to May).
Family Phocidae (earless seals)						
Harbor seal[8]	Washington inland waters[5].	-; N	11,036 (0.15; n/a; 1999)	n/a	9.8	Common; Year-round resident.
Northern elephant seal	California breeding stock.	-; N	179,000 (n/a; 81,368; 2010).	4,882	8.8	Seasonal/rare: Spring to late fall (Apr to Nov).

[1] ESA status: Endangered (E), Threatened (T)/MMPA status: Depleted (D). A dash (-) indicates that the species is not listed under the ESA or designated as depleted under the MMPA. Under the MMPA, a strategic stock is one for which the level of direct human-caused mortality exceeds PBR (see footnote 3) or which is determined to be declining and likely to be listed under the ESA within the foreseeable future. Any species or stock listed under the ESA is automatically designated under the MMPA as depleted and as a strategic stock.

[2] CV is coefficient of variation; N_{min} is the minimum estimate of stock abundance. In some cases, CV is not applicable. For certain stocks of pinnipeds, abundance estimates are based upon observations of animals (often pups) ashore multiplied by some correction factor derived from knowledge of the specie's (or similar species') life history to arrive at a best abundance estimate; therefore, there is no associated CV. In these cases, the minimum abundance may represent actual counts of all animals ashore.

[3] Potential biological removal, defined by the MMPA as the maximum number of animals, not including natural mortalities, that may be removed from a marine mammal stock while allowing that stock to reach or maintain its optimum sustainable population size (OSP).

[4] These values, found in NMFS' SARs, represent annual levels of human-caused mortality plus serious injury from all sources combined (*e.g.*, commercial fisheries, subsistence hunting, ship strike). Annual M/SI often cannot be determined precisely and is in some cases presented as a minimum value. All values presented here are from the draft 2015 SARs (*www.nmfs.noaa.gov/pr/sars/draft.htm*) except harbor seals. See comment 8.

[5] Abundance estimates for these stocks are greater than eight years old and are therefore not considered current. PBR is considered undetermined for these stocks, as there is no current minimum abundance estimate for use in calculation. We nevertheless present the most recent abundance estimates and PBR values, as these represent the best available information for use in this document.

[6] Best abundance is calculated as the product of pup counts and a factor based on the birth rate, sex and age structure, and growth rate of the population. A range is presented because the extrapolation factor varies depending on the vital rate parameter resulting in the growth rate (*i.e.*, high fecundity or low juvenile mortality).

[7] PBR is calculated for the U.S. portion of the stock only (excluding animals in British Columbia) and assumes that the stock is not within its OSP. If we assume that the stock is within its OSP, PBR for the U.S. portion increases to 2,069.

[8] Values for harbor seal presented here are from the 2013 SAR.

Although the humpback whale (*Megaptera novaeangliae*), minke whale (*Balaenoptera acutorostrata*), gray whale (*Eschrichtius robustus*), killer whale (*Orcinus orca*), Dall's porpoise (*Phocoenoides dalli*), and Pacific white-sided dolphin (*Lagenorhynchus obliquidens*) occur in the Strait of Juan de Fuca, these marine mammals species are an extremely rare occurrence in Port Angeles Harbor. Characteristics of Port Angeles Harbor that inhibit or deter use by these marine mammals include the semi-enclosed embayment with no through access and high volume of vessel traffic that include tankers, dry bulk cargo carriers, barges, tugs, fishing boats, leisure craft, Puget Sound Pilots craft, and ferry service, as well as USCG and Navy vessels. The smaller Dall's porpoise and Pacific white-sided dolphin are considered offshore, deep water species and would likely avoid the embayment of Port Angeles Harbor. This species also exhibit fidelity to foraging areas, and there are no known foraging areas in the behavioral harassment zone. In addition, the larger sized whales are highly visible and more likely to be detected outside of behavioral harassment zones (see Section 6.3.1 *Underwater Sound Propagation*) by marine mammal observers (protected species observers [PSOs]); therefore, exposure, and possibly behavioral harassment could be avoided. These six species are not carried forward for further analysis beyond this section. The five species for which occurrence in/near Port Angeles harbor is likely are described further below.

Harbor Porpoise

Harbor porpoises are found primarily in inshore and relatively shallow coastal waters (<100 m) from Point Barrow (Alaska) to Point Conception (California). Various genetic analyses and investigation of pollutant loads indicate a low mixing rate for harbor porpoises along the west coast of North America and likely fine-scale geographic structure along an almost continuous distribution from California to Alaska (*e.g.*, Osmek *et al.*, 1994; Chivers *et al.*, 2002, 2007). However, stock boundaries are difficult to draw because any rigid line is generally arbitrary from a biological perspective. On the basis of genetic data and density discontinuities identified from aerial surveys, eight stocks have been identified in the eastern North Pacific, including northern Oregon/Washington coastal and inland Washington stocks (Carretta *et al.*, 2013a). The Washington inland waters stock includes individuals found east of Cape Flattery and is the only stock that may occur in the project area.

The Washington inland waters stock has a population estimate of 10,682 animals (Caretta *et al.*, 2015). A recent aerial survey from April, 2015 provided an estimate of harbor porpoise in the Strait of Juan de Fuca of 647 individuals (Smultsea, *et al.*, 2015). The status of this stock relative to its Optimum Sustainable Population (OSP) level and population trends is unknown (Caretta *et al.*, 2015). The stock is not considered "depleted" or listed as a "strategic stock" under the MMPA and is not listed as "threatened" or "endangered" under the ESA.

Within the Exclusive Economic Zone (EEZ) boundaries of the coastal waters of northern Oregon and Washington, harbor porpoise deaths are known to occur in the northern Washington marine set gillnet tribal fishery. Fishing effort in the coastal marine set gillnet tribal fishery has declined since 2004. A mean annual mortality of 3.0 harbor porpoise was calculated in 2007–2011 from stranding data. Since these deaths could not be attributed to a particular fishery, and were the only confirmed fishery-related deaths in this area in 2007–2011, they are noted in unknown West Coast fisheries (Caretta *et al.*, 2013). In 2006, a UME was declared for harbor porpoises throughout Oregon and Washington, and a total of 114 strandings were reported in 2006–07. The cause of the UME has not been determined and several factors, including contaminants, genetics, and environmental conditions, are still being investigated (Carretta *et al.*, 2013a).

In Washington inland waters, harbor porpoise are known to occur in the Strait of Juan de Fuca and the San Juan Island area year round (Calambokidis and Baird 1994; Osmek *et al.*, 1998; Carretta *et al.*, 2012). Recent aerial surveys from April, 2015 reported that harbor porpoise was the most commonly sighted species in the Strait of Juan de Fuca, with 154 groups sighted over 4 days (Smultsea *et al.*, 2015). In the Strait of Juan de Fuca, harbor porpoise are seasonally localized in relatively small areas during the reproductive season (April–October). More densely localized aggregations and increased seasonal densities have been reported in the Strait of Juan de Fuca, near Victoria (Hall *et al.*, 2002). A photo-identification study in the San Juan Islands also provides evidence for local, discrete subpopulations (Flaherty and Stark 1982) with a high degree of site fidelity (Hall 2009). Harbor porpoise tend to occupy an ecological niche consisting of relatively shallow water, generally less than 650 ft (200 m) deep (Hall 1996; Lockyer *et al.* 2001; Hall 2004). No site-specific information is available for Port Angeles Harbor. Harbor porpoise could forage within Port Angeles Harbor, following local prey availability, but because of the strong site fidelity and lack of sightings in the harbor, use of the project area would be rare.

Northern Elephant Seal

Northern elephant seals that may occur in the activity area would belong to the California breeding stock. The current best abundance estimate for the California breeding stock of Northern elephant seal is 179,000 individuals (Caretta *et al.*, 2015). This stock of Northern elephant seal is not designated as "depleted" under the MMPA nor are they listed as "threatened" or "endangered" under the ESA. The level of human-caused mortality and serious injury is not known to exceed the PBR, which is 4,882. This stock of Northern elephant seals is not classified as a strategic stock (Allen and Angliss 2014). The population continues to grow, with most births occurring at southern California rookeries (Lowry *et al.* 2014). There are no known habitat issues that are of concern for this stock. However, expanding pinniped populations in general have resulted in increased human-caused serious injury and mortality, due to shootings, entrainment in power plants, interactions with recreational hook and line fisheries, separation of mothers and pups due to human disturbance, dog bites, and vessel and vehicle strikes (Carretta *et al.* 2014).

The northern elephant seal occurs almost exclusively in the eastern and central North Pacific. Rookeries are located from central Baja California, Mexico, to northern California (Stewart and Huber 1993). Recent aerial surveys from April, 2015 reported no sighting of elephant seals in the Strait of Juan de Fuca (Smultsea *et al.*, 2015). Adult elephant seals engage in two long migrations per year, one following the breeding season, and another following the annual molt (Stewart and DeLong 1995; Robinson *et al.*, 2012). Between the two foraging periods, they return to land to molt, with females returning earlier than males (March through April versus July through August). After the molt, adults return to their northern feeding areas until the next winter breeding season. Breeding occurs from December to March (Stewart and Huber 1993). Juvenile elephant seals typically leave the rookeries in April or May and head north, traveling an average of 559 to 621 miles (900 to 1,000 km). Most elephant seals return to their natal rookeries when they start breeding (Huber *et al.* 1991). Their foraging range extends thousands of miles offshore into the central North Pacific. Adults tend to stay offshore, but juveniles and subadults are often seen along the coasts of Oregon, Washington, and British Columbia (Condit and Le Boeuf 1984; Stewart and Huber 1993).

Small numbers of juvenile elephant seals haul out and go through their molting process in Washington State. Molting is a natural condition that takes 4 to 5 weeks to complete. In Washington inland waters, there are regular haul-out sites at Smith and Minor Islands, Dungeness Spit, and Protection Island in the Strait of Juan de Fuca that are thought to be used year round (Jeffries *et al.*, 2000). Juvenile elephant seals haul out along the shoreline for several weeks, occasionally entering the water and returning to the same area again. Hauling out allows the skin to warm up and help speed up the molting process. WDFW surveys in 2013 reported two haul-out sites with two individuals present (WDFW 2015). The closest documented haul-out is at Dungeness Spit, 11 miles (18 km) east of the project where one elephant seal was last reported in 2006 (WDFW 2015). Northern elephant seals are not expected to occur within Port Angeles Harbor because there are no known haul-outs and they typically use the same sites repeatedly; however, it is possible a juvenile could haul out near the project site and once on shore would likely stay for the duration of the project. In addition, elephant seals could forage within Port Angeles Harbor, following local prey availability.

Steller Sea Lion

Steller sea lions are distributed mainly around the coasts to the outer continental shelf along the North Pacific rim from northern Hokkaido, Japan through the Kuril Islands and Okhotsk Sea, Aleutian Islands and central Bering Sea, southern coast of Alaska and south to California (Loughlin *et al.*, 1984). Based on distribution, population response, and phenotypic and genotypic data, two separate stocks of Steller sea lions are recognized within U. S. waters, with the population divided into western and eastern distinct population segments (DPS) at 144° W. (Cape Suckling, Alaska) (Loughlin, 1997). The eastern DPS extends from California to Alaska, including the Gulf of Alaska, and is the only stock that may occur near Port Angeles Harbor.

According to NMFS' recent status review (NMFS, 2013), the best available information indicates that the overall abundance of eastern DPS Steller sea lions has increased for a sustained period of at least three decades while pup production has also increased significantly, especially since the mid-1990s. Johnson and Gelatt (2012) provided an analysis of growth trends of the entire eastern DPS from 1979–2010, indicating that the stock increased during this period at an annual rate of 4.2 percent (90 percent CI 3.7–4.6). Most of the overall increase occurred in the northern portion of the range (southeast Alaska and British Columbia), but pup counts in Oregon and California also increased significantly (*e.g.*, Merrick *et al.*, 1992; Sease *et al.*, 2001; Olesiuk and Trites, 2003; Fritz *et al.* 2008; Olesiuk, 2008; NMFS, 2008, 2013). Because the counts of eastern Steller sea lions have steadily increased over a 30+ year period, this stock is likely within its OSP; however, no determination of its status relative to OSP has been made (Allen and Angliss, 2014).

Between 2008 and 2012, a minimum total of 64 animals from the eastern Steller sea lion stock were reported taken. The annual average take for subsistence harvest in Alaska was 11 individuals in 2004–08 (Muto and Angliss, 2015). Data on community subsistence harvests is no longer being collected, and this average is retained as an estimate for current and future subsistence harvest. Sea lion deaths are also known to occur because of illegal shooting, vessel strikes, or capture in research gear and other traps (Muto and Angliss, 2015). The mean average human-caused mortality and serious injury of eastern Steller sea lions for 2008–2012 from sources other than fisheries and Alaska Native harvest is 29.4.

The population is estimated to be within the range of 60,131 and 74,448 animals. This stock is not listed as "depleted" under the MMPA, and is not listed as "threatened" or "endangered" under the ESA (Alaska SAR). It is considered a strategic stock under the MMPA.

The eastern stock breeds in rookeries located in southeast Alaska, British Columbia, Oregon, and California. There are no known breeding rookeries in Washington (Allen and Angliss, 2014) but eastern stock Steller sea lions are present year-round along the outer coast of Washington, including immature animals or non-breeding adults of both sexes. In Washington, Steller sea lions primarily occur at haul-out sites along the outer coast from the Columbia River to Cape Flattery and in inland waters sites along the Vancouver Island coastline of the Strait of Juan de Fuca (Jeffries *et al.*, 2000; Olesiuk and Trites, 2003; Olesiuk, 2008). Numbers vary seasonally in Washington waters with peak numbers present during the fall and winter months (Jeffries *et al.*, 2000). Recent aerial surveys from April, 2015 reported seven groups of Steller sea lions sighted in the Strait of Juan de Fuca (Smultsea *et al.*, 2015).

There are no known Steller sea lions haul-outs in Port Angeles Harbor (WDFW, 2015). The nearest haul-out to the project site is approximately 12.5 miles (20 kilometers) across the Strait of Juan de Fuca at Race Rocks and identified to have an annual maximum number of greater than 100 animals (Wiles, 2015). Animal censuses at the Race Rocks Ecological Reserve between January 2014 and January 2016 indicated a peak abundance in September to December, with numbers that ranged from 200 to 500 individuals (Race Rocks Ecological Reserve Web site 2016). The Steller sea lions at Race Rocks are mainly bachelor bulls or juvenile yearlings. This is not a breeding colony, and mature females are not usually present (Race Rocks Ecological Reserve Web site 2016). In contrast, a haul-out about 30 miles (48 km) east of the project at Point Wilson was surveyed November 2013 with one Steller sea lion (WDFW, 2015). Steller sea lions could forage within Port Angeles Harbor, following local prey availability, but because haul-outs are far away, use of the area is likely limited.

Harbor Seal

Harbor seals inhabit coastal and estuarine waters and shoreline areas of the northern hemisphere from temperate to polar regions. The eastern North Pacific subspecies is found from Baja California north to the Aleutian Islands and into the Bering Sea. Multiple lines of evidence support the existence of geographic structure among harbor seal populations from California to Alaska (*e.g.*, O'Corry-Crowe *et al.*, 2003; Temte, 1986; Calambokidis *et al.*, 1985; Kelly, 1981; Brown, 1988; Lamont *et al.*, 1996; Burg, 1996). Harbor seals are generally non-migratory, and analysis of genetic information suggests that genetic differences increase with geographic distance (Westlake and O'Corry-Crowe, 2002). However, because stock boundaries are difficult to meaningfully draw from a biological perspective, three separate harbor seal stocks are recognized for management purposes along the west coast of the continental U.S.: (1) Inland waters of Washington (including Hood Canal, Puget Sound, and the Strait of Juan de Fuca out to Cape Flattery), (2) outer coast of Oregon and Washington, and (3) California (Carretta *et al.*, 2013a). Multiple stocks are recognized in Alaska. Samples from Washington, Oregon, and California demonstrate a high level of genetic diversity and indicate that the harbor seals of Washington inland waters possess unique haplotypes not found in seals from the coasts of Washington, Oregon, and California (Lamont *et al.*, 1996). Only the Washington inland waters stock may be found in the project area.

Recent genetic evidence suggests that harbor seals of Washington inland waters may have sufficient population structure to warrant division into multiple distinct stocks (Huber *et al.*, 2010, 2012). Within U.S. west coast waters, five stocks of harbor seals are recognized: (1) Southern Puget Sound (south of the Tacoma Narrows Bridge); (2) Washington Northern Inland Waters (including Puget Sound north of the Tacoma Narrows Bridge, the San Juan Islands, and the Strait of Juan de Fuca); (3) Hood Canal; (4) Oregon/Washington Coast; and (5) California. Until this stock structure is accepted, we consider a single Washington inland waters stock.

In 1999, the mean count of harbor seals occurring in Washington's inland waters was 7,213 (CV = 0.14) in Washington Northern Inland Waters (Caretta, *et al.*, 2015). The most recent population estimate available for the Washington inland waters stock comes from the 2013 SAR, which reported 11,036 animals. The draft 2015 SAR (Caretta *et al.*, 2015) currently lists the population size as unknown and PBR as undetermined. Harbor seal counts in Washington State increased at an annual rate of six percent from 1983–96, increasing to ten percent for the period 1991–96 (Jeffries *et al.*, 1997).

Harbor seals occur year round throughout the nearshore inland waters of Washington. Harbor seals are expected to occur year round in Port Angeles Harbor, with a nearby haul-out site on a log boom located approximately 1.7 miles (2.7 km) west of the project site that was last surveyed in March 2013 and had a total count of 73 harbor seals (WDFW 2015). Another haulout site is 1.3 miles (2.1 km) south of the project but is across the harbor that was last surveyed in July 2010 and had a total count of 87 harbor seals (WDFW 2015). The level of use of these haul-outs during the fall and winter is unknown, but is expected to be much less as air temperatures become colder than water temperatures, resulting in seals in general hauling out less (Pauli and Terhune 1987). Harbor seals may also use other undocumented haul-out sites near the project site. Recent aerial surveys from April, 2015 reported that harbor seals were the most commonly sighted pinniped in the Strait of Juan de Fuca, with nearly 1400 individuals sighted in 286 groups (Smultsea *et al.*, 2015).

California Sea Lion

California sea lions range from the Gulf of California north to the Gulf of Alaska, with breeding areas located in the Gulf of California, western Baja California, and southern California. Five genetically distinct geographic populations have been identified: (1) Pacific temperate, (2) Pacific subtropical, and (3–5) southern, central, and northern Gulf of California (Schramm *et al.*, 2009). Rookeries for the Pacific temperate population are found within U.S. waters and just south of the U.S.-Mexico border, and animals belonging to this population may be found from the Gulf of Alaska to Mexican waters off Baja California. For management purposes, a stock of California sea lions comprising those animals at rookeries within the U.S. is defined (*i.e.*, the U.S. stock of California sea lions) (Carretta *et al.*, 2014). Pup production at the Coronado Islands rookery in Mexican waters is considered an insignificant contribution to the overall size of the Pacific temperate population (Lowry and Maravilla-Chavez, 2005).

Trends in pup counts from 1975 through 2008 have been assessed for four rookeries in southern California and for haul-outs in central and northern California. During this time period counts of pups increased at an annual rate of 5.4 percent, excluding six El Nino years when pup production declined dramatically before quickly rebounding (Carretta *et al.*, 2013a). The maximum population growth rate was 9.2 percent when pup counts from the El Niño years were removed. This stock has an estimated population abundance of 296,750 animals. California sea lions in the U.S. are not listed as "endangered" or "threatened" under the Endangered Species Act or as "depleted" under the MMPA (Caretta *et al.*, 2015).

The average annual commercial fishery mortality is 331 animals per year. Total human-caused mortality of this stock is at least 389 animals per year. In addition, a summary of stranding database records for 2005–09 shows an annual average of 65 such events, which is likely a gross underestimate because most carcasses are not recovered. California sea lions may also be removed because of predation on endangered salmonids (seventeen per year, 2008–10) or incidentally captured during scientific research (three per year, 2005–09) (Carretta *et al.*, 2013a). Sea lion mortality has also been linked to the algal-produced neurotoxin domoic acid (Scholin *et al.*, 2000). Future mortality may be expected to occur, due to the sporadic occurrence of such harmful algal blooms. There was an Unusual Mortality Event (UME) declaration in effect for California sea lions from 2013–2015. Beginning in January 2013, elevated strandings of California sea lion pups have been observed in southern California, with live sea lion strandings nearly three times higher than the historical average. Findings to date indicate that a likely contributor to the large number of stranded, malnourished pups was a change in the availability of sea lion prey for nursing mothers, especially sardines. The causes and mechanisms of this UME remain under investigation (*www.nmfs.noaa.gov/pr/health/mmume/californiasealions2013.htm;* accessed January 29, 2016).

An estimated 3,000 to 5,000 California sea lions migrate northward along the coast to central and northern California, Oregon, Washington, and Vancouver Island during the non-breeding season from September to May (Jeffries *et al.*, 2000) and return south the following spring (Mate, 1975; Bonnell *et al.*, 1983). Peak numbers of up to 1,000 California sea lions occur in Puget Sound (including Hood Canal) during this time period (Jeffries *et al.*, 2000).

During the summer, California sea lions breed on islands from the Gulf of California to the Channel Islands and seldom travel more than about 31 miles (50 km) from the islands. The primary rookeries are located on the California Channel Islands of San Miguel, San Nicolas, Santa Barbara, and San Clemente, probably in response to changes in prey availability. In the nonbreeding season, adult and subadult males migrate north along the coast to central and northern California, Oregon, Washington, and Vancouver Island, and return south in the spring. Their distribution shifts to the northwest in fall and to the southeast during winter and spring. Recent aerial surveys from April, 2015 reported 12 sightings of California sea lions in the Strait of Juan de Fuca representing 13 individuals (Smultsea *et al.*, 2015). California sea lions are occasionally sighted hundreds of miles offshore. The animals found in northwest waters are typically males; most adult females with pups remain in waters near their breeding rookeries off the coasts of California and Mexico. Females and juveniles tend to stay closer to the rookeries. California sea lions also enter bays, harbors, and river mouths and often haul out on man-made structures such as piers, jetties, offshore buoys, and oil platforms.

Dedicated, regular haul-outs used by adult and subadult California sea lions in Washington inland waters have been identified (Jeffries *et al.*, 2000). There are no known California sea lion haul-outs in Port Angeles Harbor (WDFW 2015). The nearest haul-out is about 40 miles (64 km) east of the project site near Admiralty Inlet (Jeffries *et al.*, 2000). California sea lions are typically present between August and June in Washington inland waters, with peak abundance numbers occurring between October and May (NMFS 1997; Jeffries *et al.*, 2000). California sea lions could forage within Port Angeles Harbor, following local prey availability, but because haul-outs are far away, use of the project area is likely limited. During the summer months and associated breeding periods, the inland waters would not be considered a high-use area by California sea lions, because they would be returning to rookeries in California waters. However, surveys at Navy facilities, primarily located in Hood Canal, indicate that a few individuals are present through mid-June to July, with some arrivals in August and in some cases individuals present year round (U.S. Department of the Navy 2015). The limited number of California sea lions observed during these surveys suggests that a few individual animals could be moving through the Strait Juan de Fuca and may use the activity area before heading to established haul-out sites to the east within the inland waters of Puget Sound.

Potential Effects of the Specified Activity on Marine Mammals and Their Habitat

This section includes a summary and discussion of the ways that components of the specified activity (*e.g.* sound produced by pile driving), including mitigation, may impact marine mammals and their habitat. The "Estimated Take by Incidental Harassment" section later in this document will include a quantitative analysis of the number of individuals that are expected to be taken by this activity. The "Negligible Impact Analysis" section will include the analysis of how this specific activity will impact marine mammals and will consider the content of this section, the "Estimated Take by Incidental Harassment" section, and the "Proposed Mitigation" section to draw conclusions regarding the likely impacts of this activity on the reproductive success or survivorship of individuals and from that on the affected marine mammal populations or stocks.

In the following discussion, we provide general background information on sound and marine mammal hearing before considering potential effects to marine mammals from sound produced by vibratory and impact pile driving.

Description of Sound Sources

Sound travels in waves, the basic components of which are frequency, wavelength, velocity, and amplitude. Frequency is the number of pressure waves that pass by a reference point per unit of time and is measured in hertz (Hz) or cycles per second. Wavelength is the distance between two peaks of a sound wave; lower frequency sounds have longer wavelengths than higher frequency sounds and attenuate (decrease) more rapidly in shallower water. Amplitude is the height of the sound pressure wave or the 'loudness' of a sound and is typically measured using the decibel (dB) scale. A dB is the ratio between a measured pressure (with sound) and a reference pressure (sound at a constant pressure, established by scientific standards). It is a logarithmic unit that accounts for large variations in amplitude; therefore, relatively small changes in dB ratings correspond to large changes in sound pressure. When referring to sound pressure levels (SPLs; the sound force per unit area), sound is referenced in the context of underwater sound pressure to 1 microPascal (μPa). One pascal is the pressure resulting from a force of one newton exerted over an area of one square meter. The source level (SL) represents the sound level at a distance of 1 m from the source (referenced to 1 μPa). The received level is the sound level at the listener's position. Note that all underwater sound levels in this document are referenced to a pressure of 1 μPa and all airborne sound levels in this document are referenced to a pressure of 20 μPa.

Root mean square (rms) is the quadratic mean sound pressure over the duration of an impulse. Rms is calculated by squaring all of the sound amplitudes, averaging the squares, and then taking the square root of the average (Urick, 1983). Rms accounts for both positive and negative values; squaring the pressures makes all values positive so that they may be accounted for in the summation of pressure levels (Hastings and Popper, 2005). This measurement is often used in the context of discussing behavioral effects, in part because behavioral effects, which often result from auditory cues, may be better expressed through averaged units than by peak pressures.

When underwater objects vibrate or activity occurs, sound-pressure waves are created. These waves alternately compress and decompress the water as the sound wave travels. Underwater sound waves radiate in all directions away from the source (similar to ripples on the surface of a pond), except in cases where the source is directional. The compressions and decompressions associated with sound waves are detected as changes in pressure by aquatic life and man-made sound receptors such as hydrophones.

Even in the absence of sound from the specified activity, the underwater environment is typically loud due to ambient sound. Ambient sound is defined as environmental background sound levels lacking a single source or point (Richardson *et al.*, 1995), and the sound level of a region is defined by the total acoustical energy being generated by known and unknown sources. These sources may include physical (*e.g.*, waves, earthquakes, ice, atmospheric sound), biological (*e.g.*, sounds produced by marine mammals, fish, and invertebrates), and anthropogenic sound (*e.g.*, vessels, dredging, aircraft, construction). A number of sources contribute to ambient sound, including the following (Richardson *et al.*, 1995):

- Wind and waves: The complex interactions between wind and water surface, including processes such as breaking waves and wave-induced bubble oscillations and cavitation, are a main source of naturally occurring ambient noise for frequencies between 200 Hz and 50 kHz (Mitson, 1995). In general, ambient sound levels tend to increase with increasing wind speed and wave height. Surf noise becomes important near shore, with measurements collected at a distance of 8.5 km from shore showing an increase of 10 dB in the 100 to 700 Hz band during heavy surf conditions.
- Precipitation: Sound from rain and hail impacting the water surface can become an important component of total noise at frequencies above 500 Hz, and possibly down to 100 Hz during quiet times.
- Biological: Marine mammals can contribute significantly to ambient noise levels, as can some fish and shrimp. The frequency band for biological contributions is from approximately 12 Hz to over 100 kHz.
- Anthropogenic: Sources of ambient noise related to human activity include transportation (surface vessels and aircraft), dredging and construction, oil and gas drilling and production, seismic surveys, sonar, explosions, and ocean acoustic studies. Shipping noise typically dominates the total ambient

noise for frequencies between 20 and 300 Hz. In general, the frequencies of anthropogenic sounds are below 1 kHz and, if higher frequency sound levels are created, they attenuate rapidly (Richardson *et al.*, 1995). Sound from identifiable anthropogenic sources other than the activity of interest (*e.g.*, a passing vessel) is sometimes termed background sound, as opposed to ambient sound.

The sum of the various natural and anthropogenic sound sources at any given location and time—which comprise "ambient" or "background" sound—depends not only on the source levels (as determined by current weather conditions and levels of biological and shipping activity) but also on the ability of sound to propagate through the environment. In turn, sound propagation is dependent on the spatially and temporally varying properties of the water column and sea floor, and is frequency-dependent. As a result of the dependence on a large number of varying factors, ambient sound levels can be expected to vary widely over both coarse and fine spatial and temporal scales. Sound levels at a given frequency and location can vary by 10–20 dB from day to day (Richardson *et al.*, 1995). The result is that, depending on the source type and its intensity, sound from the specified activity may be a negligible addition to the local environment or could form a distinctive signal that may affect marine mammals.

In-water construction activities associated with the project would include impact pile driving and vibratory pile driving. The sounds produced by these activities fall into one of two general sound types: Pulsed and non-pulsed (defined in the following). The distinction between these two sound types is important because they have differing potential to cause physical effects, particularly with regard to hearing (*e.g.*, Ward, 1997 in Southall *et al.*, 2007). Please see Southall *et al.*, (2007) for an in-depth discussion of these concepts.

Pulsed sound sources (*e.g.*, explosions, gunshots, sonic booms, impact pile driving) produce signals that are brief (typically considered to be less than one second), broadband, atonal transients (ANSI, 1986; Harris, 1998; NIOSH, 1998; ISO, 2003; ANSI, 2005) and occur either as isolated events or repeated in some succession. Pulsed sounds are all characterized by a relatively rapid rise from ambient pressure to a maximal pressure value followed by a rapid decay period that may include a period of diminishing, oscillating maximal and minimal pressures, and generally have an increased capacity to induce physical injury as compared with sounds that lack these features.

Non-pulsed sounds can be tonal, narrowband, or broadband, brief or prolonged, and may be either continuous or non-continuous (ANSI, 1995; NIOSH, 1998). Some of these non-pulsed sounds can be transient signals of short duration but without the essential properties of pulses (*e.g.*, rapid rise time). Examples of non-pulsed sounds include those produced by vessels, aircraft, machinery operations such as drilling or dredging, vibratory pile driving, and active sonar systems (such as those used by the U.S. Navy). The duration of such sounds, as received at a distance, can be greatly extended in a highly reverberant environment.

Impact hammers operate by repeatedly dropping a heavy piston onto a pile to drive the pile into the substrate. Sound generated by impact hammers is characterized by rapid rise times and high peak levels, a potentially injurious combination (Hastings and Popper, 2005). Vibratory hammers install piles by vibrating them and allowing the weight of the hammer to push them into the sediment. Vibratory hammers produce significantly lower levels of sound than impact hammers. Peak SPLs may be 180 dB or greater, but are generally 10 to 20 dB lower than SPLs generated during impact pile driving of the same-sized pile (Oestman *et al.*, 2009). Rise time is slower, reducing the probability and severity of injury, and sound energy is distributed over a greater amount of time (Nedwell and Edwards, 2002; Carlson *et al.*, 2005).

Marine Mammal Hearing

Hearing is the most important sensory modality for marine mammals, and exposure to intense sound can have deleterious effects. To appropriately assess these potential effects, it is necessary to understand the frequency ranges marine mammals are able to hear. Current data indicate that not all marine mammal species have equal hearing capabilities (*e.g.*, Richardson *et al.*, 1995; Wartzok and Ketten, 1999; Au and Hastings, 2008). To reflect this, Southall *et al.* (2007) recommended that marine mammals be divided into functional hearing groups based on measured or estimated hearing ranges on the basis of available behavioral data, audiograms derived using auditory evoked potential techniques, anatomical modeling, and other data. The lower and/or upper frequencies for some of these functional hearing groups have been modified from those designated by Southall *et al.* (2007). Note that no direct measurements of hearing ability have been successfully completed for low-frequency cetaceans. The functional groups and the associated frequencies are indicated below (note that these frequency ranges correspond to the range for the composite group, with the entire range not necessarily reflecting the capabilities of every species within that group):

- Low-frequency cetaceans (mysticetes): Functional hearing is estimated to occur between approximately 7 Hz and 25 kHz (up to 30 kHz in some species), with best hearing estimated to be from 100 Hz to 8 kHz (Watkins, 1986; Ketten, 1998; Houser *et al.*, 2001; Au *et al.*, 2006; Lucifredi and Stein, 2007; Ketten *et al.*, 2007; Parks *et al.*, 2007a; Ketten and Mountain, 2009; Tubelli *et al.*, 2012);
- Mid-frequency cetaceans (larger toothed whales, beaked whales, and most delphinids): Functional hearing is estimated to occur between approximately 150 Hz and 160 kHz, with best hearing from 10 to less than 100 kHz (Johnson, 1967; White, 1977; Richardson *et al.*, 1995; Szymanski *et al.*, 1999; Kastelein *et al.*, 2003; Finneran *et al.*, 2005a, 2009; Nachtigall *et al.*, 2005, 2008; Yuen *et al.*, 2005; Popov *et al.*, 2007; Au and Hastings, 2008; Houser *et al.*, 2008; Pacini *et al.*, 2010, 2011; Schlundt *et al.*, 2011);
- High-frequency cetaceans (porpoises, river dolphins, and members of the genera *Kogia* and *Cephalorhynchus;* including two members of the genus *Lagenorhynchus*, including the hourglass dolphin, on the basis of recent echolocation data and genetic data [May-Collado and Agnarsson, 2006; Kyhn *et al.* 2009, 2010; Tougaard *et al.* 2010]): Functional hearing is estimated to occur between approximately 200 Hz and 180 kHz (Popov and Supin, 1990a,b; Kastelein *et al.*, 2002; Popov *et al.*, 2005); and
- Pinnipeds in water; Phocidae (true seals): Functional hearing is estimated to occur between approximately 75 Hz to 100 kHz, with best hearing between 1–50 kHz (Møhl, 1968; Terhune and Ronald, 1971, 1972; Richardson *et al.*, 1995; Kastak and Schusterman, 1999; Reichmuth, 2008; Kastelein *et al.*, 2009);
- Pinnipeds in water; Otariidae (eared seals): Functional hearing is estimated to occur between 100 Hz and 48 kHz for Otariidae, with best hearing between 2–48 kHz (Schusterman *et al.*, 1972; Moore and Schusterman, 1987; Babushina *et al.*, 1991; Richardson *et al.*, 1995; Kastak and Schusterman, 1998; Kastelein *et al.*, 2005a; Mulsow and Reichmuth, 2007; Mulsow *et al.*, 2011a, b).

The pinniped functional hearing group was modified from Southall *et al.* (2007) on the basis of data indicating that phocid species have consistently demonstrated an extended frequency range of hearing compared to otariids, especially in the higher frequency range (Hemilä *et al.*, 2006; Kastelein *et al.*, 2009; Reichmuth and Holt, 2013).

There are five marine mammal species (one cetacean and four pinniped [two otariid and two phocid] species) with expected potential to co-occur with Navy construction activities. Please refer to Table 2. The harbor porpoise is classified as a high-frequency cetacean.

Potential effects of underwater sound—Please refer to the information given previously (*Description of Sound Sources*) regarding sound, characteristics of sound types, and metrics used in this document. Anthropogenic sounds cover a broad range of frequencies and sound levels and can have a range of highly variable impacts on marine life, from none or minor to potentially severe responses, depending on received levels, duration of exposure, behavioral context, and various other factors. The potential effects of underwater sound from active acoustic sources can potentially result in one or more of the following: Temporary or permanent hearing impairment, non-auditory physical or physiological effects, behavioral disturbance, stress, and masking (Richardson *et al.*, 1995; Gordon *et al.*, 2004; Nowacek *et al.*, 2007; Southall *et al.*, 2007; Gotz *et al.*, 2009). The degree of effect is intrinsically related to the signal characteristics, received level, distance from the source, and duration of the sound exposure. In general, sudden, high level sounds can cause hearing loss, as can longer exposures to lower level sounds. Temporary or permanent loss of hearing will occur almost exclusively for noise within an animal's hearing range. We first describe specific manifestations of acoustic effects before providing discussion specific to the Navy's construction activities.

Richardson *et al.* (1995) described zones of increasing intensity of effect that might be expected to occur, in relation to distance from a source and assuming that the signal is within an animal's hearing range. First is the area within which the acoustic signal would be audible (potentially perceived) to the animal, but not strong enough to elicit any overt behavioral or physiological response. The next zone corresponds with the area where the signal is audible to the animal and of sufficient intensity to elicit behavioral or physiological responsiveness. Third is a zone within which, for signals of high intensity, the received level is sufficient to potentially cause discomfort or tissue damage to auditory or other systems. Overlaying these zones to a certain extent is the area within which masking (*i.e.*, when a sound interferes with or masks the ability of an animal to detect a signal of interest that is above the absolute hearing threshold) may occur; the masking zone may be highly variable in size.

We describe the more severe effects (*i.e.*, permanent hearing impairment, certain non-auditory physical or physiological effects) only briefly as we do not expect that there is a reasonable likelihood that the Navy's activities may result in such effects (see below for further discussion). Marine mammals exposed to high-intensity sound, or to lower-intensity sound for prolonged periods, can experience hearing threshold shift (TS), which is the loss of hearing sensitivity at certain frequency ranges (Kastak *et al.*, 1999; Schlundt *et al.*, 2000; Finneran *et al.*, 2002, 2005b). TS can be permanent (PTS), in which case the loss of hearing sensitivity is not fully recoverable, or temporary (TTS), in which case the animal's hearing threshold would recover over time (Southall *et al.*, 2007). Repeated sound exposure that leads to TTS could cause PTS. In severe cases of PTS, there can be total or partial deafness, while in most cases the animal has an impaired ability to hear sounds in specific frequency ranges (Kryter, 1985).

When PTS occurs, there is physical damage to the sound receptors in the ear (*i.e.*, tissue damage), whereas TTS represents primarily tissue fatigue and is reversible (Southall *et al.*, 2007). In addition, other investigators have suggested that TTS is within the normal bounds of physiological variability and tolerance and does not represent physical injury (*e.g.*, Ward, 1997). Therefore, NMFS does not consider TTS to constitute auditory injury.

Relationships between TTS and PTS thresholds have not been studied in marine mammals—PTS data exists only for a single harbor seal (Kastak *et al.*, 2008)—but are assumed to be similar to those in humans and other terrestrial mammals. PTS typically occurs at exposure levels at least several decibels above (a 40-dB threshold shift approximates PTS onset; *e.g.*, Kryter *et al.*, 1966; Miller, 1974) that inducing mild TTS (a 6-dB threshold shift approximates TTS onset; *e.g.*, Southall *et al.* 2007). Based on data from terrestrial mammals, a precautionary assumption is that the PTS thresholds for impulse sounds (such as impact pile driving pulses as received close to the source) are at least 6 dB higher than the TTS threshold on a peak-pressure basis and PTS cumulative sound exposure level thresholds are 15 to 20 dB higher than TTS cumulative sound exposure level thresholds (Southall *et al.*, 2007). Given the higher level of sound or longer exposure duration necessary to cause PTS as compared with TTS, it is considerably less likely that PTS could occur.

Non-auditory physiological effects or injuries that theoretically might occur in marine mammals exposed to high level underwater sound or as a secondary effect of extreme behavioral reactions (*e.g.*, change in dive profile as a result of an avoidance reaction) caused by exposure to sound include neurological effects, bubble formation, resonance effects, and other types of organ or tissue damage (Cox *et al.*, 2006; Southall *et al.*, 2007; Zimmer and Tyack, 2007). The Navy's activities do not involve the use of devices such as explosives or mid-frequency active sonar that are associated with these types of effects.

When a live or dead marine mammal swims or floats onto shore and is incapable of returning to sea, the event is termed a "stranding" (16 U.S.C. 1421h(3)). Marine mammals are known to strand for a variety of reasons, such as infectious agents, biotoxicosis, starvation, fishery interaction, ship strike, unusual oceanographic or weather events, sound exposure, or combinations of these stressors sustained concurrently or in series (*e.g.*, Geraci *et al.*, 1999). However, the cause or causes of most strandings are unknown (*e.g.*, Best, 1982). Combinations of dissimilar stressors may combine to kill an animal or dramatically reduce its fitness, even though one exposure without the other would not be expected to produce the same outcome (*e.g.*, Sih *et al.*, 2004). For further description of stranding events see, *e.g.*, Southall *et al.*, 2006; Jepson *et al.*, 2013; Wright *et al.*, 2013.

1. *Temporary threshold shift*—TTS is the mildest form of hearing impairment that can occur during exposure to sound (Kryter, 1985). While experiencing TTS, the hearing threshold rises, and a sound must be at a higher level in order to be heard. In terrestrial and marine mammals, TTS can last from minutes or hours to days (in cases of strong TTS). In many cases, hearing sensitivity recovers rapidly after exposure to the sound ends. Few data on sound levels and durations necessary to elicit mild TTS have been obtained for marine mammals, and none of the data published at the time of this writing concern TTS elicited by exposure to multiple pulses of sound.

Marine mammal hearing plays a critical role in communication with conspecifics, and interpretation of environmental cues for purposes such as predator avoidance and prey capture. Depending on the degree (elevation of threshold in dB), duration (*i.e.,* recovery time), and frequency range of TTS, and the context in which it is experienced, TTS can have effects on marine mammals ranging from discountable to serious. For example, a marine mammal may be able to readily compensate for a brief, relatively small amount of TTS in a non-critical frequency range that occurs during a time where ambient noise is lower and there are not as many competing sounds present. Alternatively, a larger amount and longer duration of TTS sustained during time when communication is critical for successful mother/calf interactions could have more serious impacts.

Currently, TTS data only exist for four species of cetaceans (bottlenose dolphin [*Tursiops truncatus*], beluga whale [*Delphinapterus leucas*], harbor porpoise, and Yangtze finless porpoise [*Neophocoena asiaeorientalis*]) and three species of pinnipeds (northern elephant seal, harbor seal, and California sea lion) exposed to a limited number of sound sources (*i.e.,* mostly tones and octave-band noise) in laboratory settings (*e.g.,* Finneran *et al.,* 2002; Nachtigall *et al.,* 2004; Kastak *et al.,* 2005; Lucke *et al.,* 2009; Popov *et al.,* 2011). In general, harbor seals (Kastak *et al.,* 2005; Kastelein *et al.,* 2012a) and harbor porpoises (Lucke *et al.,* 2009; Kastelein *et al.,* 2012b) have a lower TTS onset than other measured pinniped or cetacean species. Additionally, the existing marine mammal TTS data come from a limited number of individuals within these species. There are no data available on noise-induced hearing loss for mysticetes. For summaries of data on TTS in marine mammals or for further discussion of TTS onset thresholds, please see Southall *et al.* (2007) and Finneran and Jenkins (2012).

2. *Behavioral effects*—Behavioral disturbance may include a variety of effects, including subtle changes in behavior (*e.g.,* minor or brief avoidance of an area or changes in vocalizations), more conspicuous changes in similar behavioral activities, and more sustained and/or potentially severe reactions, such as displacement from or abandonment of high-quality habitat. Behavioral responses to sound are highly variable and context-specific and any reactions depend on numerous intrinsic and extrinsic factors (*e.g.,* species, state of maturity, experience, current activity, reproductive state, auditory sensitivity, time of day), as well as the interplay between factors (*e.g.,* Richardson *et al.,* 1995; Wartzok *et al.,* 2003; Southall *et al.,* 2007; Weilgart, 2007; Archer *et al.,* 2010). Behavioral reactions can vary not only among individuals but also within an individual, depending on previous experience with a sound source, context, and numerous other factors (Ellison *et al.,* 2012), and can vary depending on characteristics associated with the sound source (*e.g.,* whether it is moving or stationary, number of sources, distance from the source). Please see Appendices B–C of Southall *et al.* (2007) for a review of studies involving marine mammal behavioral responses to sound.

Habituation can occur when an animal's response to a stimulus wanes with repeated exposure, usually in the absence of unpleasant associated events (Wartzok *et al.,* 2003). Animals are most likely to habituate to sounds that are predictable and unvarying. It is important to note that habituation is appropriately considered as a "progressive reduction in response to stimuli that are perceived as neither aversive nor beneficial," rather than as, more generally, moderation in response to human disturbance (Bejder *et al.,* 2009). The opposite process is sensitization, when an unpleasant experience leads to subsequent responses, often in the form of avoidance, at a lower level of exposure. As noted, behavioral state may affect the type of response. For example, animals that are resting may show greater behavioral change in response to disturbing sound levels than animals that are highly motivated to remain in an area for feeding (Richardson *et al.,* 1995; NRC, 2003; Wartzok *et al.,* 2003). Controlled experiments with captive marine mammals have showed pronounced behavioral reactions, including avoidance of loud sound sources (Ridgway *et al.,* 1997; Finneran *et al.,* 2003). Observed responses of wild marine mammals to loud pulsed sound sources (typically seismic airguns or acoustic harassment devices) have been varied but often consist of avoidance behavior or other behavioral changes suggesting discomfort (Morton and Symonds, 2002; see also Richardson *et al.,* 1995; Nowacek *et al.,* 2007).

Available studies show wide variation in response to underwater sound; therefore, it is difficult to predict specifically how any given sound in a particular instance might affect marine mammals perceiving the signal. If a marine mammal does react briefly to an underwater sound by changing its behavior or moving a small distance, the impacts of the change are unlikely to be significant to the individual, let alone the stock or population. However, if a sound source displaces marine mammals from an important feeding or breeding area for a prolonged period, impacts on individuals and populations could be significant (*e.g.,* Lusseau and Bejder, 2007; Weilgart, 2007; NRC, 2005). However, there are broad categories of potential response, which we describe in greater detail here, that include alteration of dive behavior, alteration of foraging behavior, effects to breathing, interference with or alteration of vocalization, avoidance, and flight.

Changes in dive behavior can vary widely, and may consist of increased or decreased dive times and surface intervals as well as changes in the rates of ascent and descent during a dive (*e.g.,* Frankel and Clark, 2000; Costa *et al.,* 2003; Ng and Leung, 2003; Nowacek *et al.,* 2004; Goldbogen *et al.,* 2013a,b). Variations in dive behavior may reflect interruptions in biologically significant activities (*e.g.,* foraging) or they may be of little biological significance. The impact of an alteration to dive behavior resulting from an acoustic exposure depends on what the animal is doing at the time of the exposure and the type and magnitude of the response.

Disruption of feeding behavior can be difficult to correlate with anthropogenic sound exposure, so it is usually inferred by observed displacement from known foraging areas, the appearance of secondary indicators (*e.g.,* bubble nets or sediment plumes), or changes in dive behavior. As for other types of behavioral response, the frequency, duration, and temporal pattern of signal presentation, as well as differences in species sensitivity, are likely contributing factors to differences in response in any given circumstance (*e.g.,* Croll *et al.,* 2001; Nowacek *et al.;* 2004; Madsen *et al.,* 2006; Yazvenko *et al.,* 2007). A determination of whether foraging disruptions incur fitness consequences would require information on or estimates of the energetic requirements of the affected individuals and the relationship between prey availability, foraging effort and success, and the life history stage of the animal.

Variations in respiration naturally vary with different behaviors and alterations to breathing rate as a function of acoustic exposure can be expected to co-occur with other behavioral reactions, such as a flight response or an alteration in diving. However, respiration rates in and of themselves may be representative of annoyance or an acute stress response. Various studies have shown that respiration rates may either be unaffected or could increase, depending on the species and signal characteristics, again highlighting the importance in understanding species differences in the tolerance of underwater noise when determining the potential for impacts resulting from anthropogenic sound exposure (*e.g.*, Kastelein *et al.*, 2001, 2005b, 2006; Gailey *et al.*, 2007).

Marine mammals vocalize for different purposes and across multiple modes, such as whistling, echolocation click production, calling, and singing. Changes in vocalization behavior in response to anthropogenic noise can occur for any of these modes and may result from a need to compete with an increase in background noise or may reflect increased vigilance or a startle response. For example, in the presence of potentially masking signals, humpback whales and killer whales have been observed to increase the length of their songs (Miller *et al.*, 2000; Fristrup *et al.*, 2003; Foote *et al.*, 2004), while right whales have been observed to shift the frequency content of their calls upward while reducing the rate of calling in areas of increased anthropogenic noise (Parks *et al.*, 2007b). In some cases, animals may cease sound production during production of aversive signals (Bowles *et al.*, 1994).

Avoidance is the displacement of an individual from an area or migration path as a result of the presence of a sound or other stressors, and is one of the most obvious manifestations of disturbance in marine mammals (Richardson *et al.*, 1995). For example, gray whales are known to change direction—deflecting from customary migratory paths—in order to avoid noise from seismic surveys (Malme *et al.*, 1984). Avoidance may be short-term, with animals returning to the area once the noise has ceased (*e.g.*, Bowles *et al.*, 1994; Goold, 1996; Stone *et al.*, 2000; Morton and Symonds, 2002; Gailey *et al.*, 2007). Longer-term displacement is possible, however, which may lead to changes in abundance or distribution patterns of the affected species in the affected region if habituation to the presence of the sound does not occur (*e.g.*, Blackwell *et al.*, 2004; Bejder *et al.*, 2006; Teilmann *et al.*, 2006).

A flight response is a dramatic change in normal movement to a directed and rapid movement away from the perceived location of a sound source. The flight response differs from other avoidance responses in the intensity of the response (*e.g.*, directed movement, rate of travel). Relatively little information on flight responses of marine mammals to anthropogenic signals exist, although observations of flight responses to the presence of predators have occurred (Connor and Heithaus, 1996). The result of a flight response could range from brief, temporary exertion and displacement from the area where the signal provokes flight to, in extreme cases, marine mammal strandings (Evans and England, 2001). However, it should be noted that response to a perceived predator does not necessarily invoke flight (Ford and Reeves, 2008), and whether individuals are solitary or in groups may influence the response.

Behavioral disturbance can also impact marine mammals in more subtle ways. Increased vigilance may result in costs related to diversion of focus and attention (*i.e.*, when a response consists of increased vigilance, it may come at the cost of decreased attention to other critical behaviors such as foraging or resting). These effects have generally not been demonstrated for marine mammals, but studies involving fish and terrestrial animals have shown that increased vigilance may substantially reduce feeding rates (*e.g.*, Beauchamp and Livoreil, 1997; Fritz *et al.*, 2002; Purser and Radford, 2011). In addition, chronic disturbance can cause population declines through reduction of fitness (*e.g.*, decline in body condition) and subsequent reduction in reproductive success, survival, or both (*e.g.*, Harrington and Veitch, 1992; Daan *et al.*, 1996; Bradshaw *et al.*, 1998). However, Ridgway *et al.* (2006) reported that increased vigilance in bottlenose dolphins exposed to sound over a five-day period did not cause any sleep deprivation or stress effects.

Many animals perform vital functions, such as feeding, resting, traveling, and socializing, on a diel cycle (24-hour cycle). Disruption of such functions resulting from reactions to stressors such as sound exposure are more likely to be significant if they last more than one diel cycle or recur on subsequent days (Southall *et al.*, 2007). Consequently, a behavioral response lasting less than one day and not recurring on subsequent days is not considered particularly severe unless it could directly affect reproduction or survival (Southall *et al.*, 2007). Note that there is a difference between multi-day substantive behavioral reactions and multi-day anthropogenic activities. For example, just because an activity lasts for multiple days does not necessarily mean that individual animals are either exposed to activity-related stressors for multiple days or, further, exposed in a manner resulting in sustained multi-day substantive behavioral responses.

3. *Stress responses*—An animal's perception of a threat may be sufficient to trigger stress responses consisting of some combination of behavioral responses, autonomic nervous system responses, neuroendocrine responses, or immune responses (*e.g.*, Seyle, 1950; Moberg, 2000). In many cases, an animal's first and sometimes most economical (in terms of energetic costs) response is behavioral avoidance of the potential stressor. Autonomic nervous system responses to stress typically involve changes in heart rate, blood pressure, and gastrointestinal activity. These responses have a relatively short duration and may or may not have a significant long-term effect on an animal's fitness.

Neuroendocrine stress responses often involve the hypothalamus-pituitary-adrenal system. Virtually all neuroendocrine functions that are affected by stress—including immune competence, reproduction, metabolism, and behavior—are regulated by pituitary hormones. Stress-induced changes in the secretion of pituitary hormones have been implicated in failed reproduction, altered metabolism, reduced immune competence, and behavioral disturbance (*e.g.*, Moberg, 1987; Blecha, 2000). Increases in the circulation of glucocorticoids are also equated with stress (Romano *et al.*, 2004).

The primary distinction between stress (which is adaptive and does not normally place an animal at risk) and "distress" is the cost of the response. During a stress response, an animal uses glycogen stores that can be quickly replenished once the stress is alleviated. In such circumstances, the cost of the stress response would not pose serious fitness consequences. However, when an animal does not have sufficient energy reserves to satisfy the energetic costs of a stress response, energy resources must be diverted from other functions. This state of distress will last until the animal replenishes its energetic reserves sufficient to restore normal function.

Relationships between these physiological mechanisms, animal behavior, and the costs of stress responses are well-studied through controlled experiments and for both laboratory and free-ranging animals (*e.g.*, Holberton *et al.*, 1996; Hood *et al.*, 1998; Jessop *et al.*, 2003; Krausman *et al.*, 2004; Lankford *et al.*, 2005). Stress responses due to exposure to anthropogenic sounds or other stressors and their effects on marine mammals have also been reviewed (Fair and Becker, 2000; Romano *et al.*, 2002b) and, more rarely, studied in wild populations (*e.g.*, Romano *et al.*, 2002a).

For example, Rolland *et al.* (2012) found that noise reduction from reduced ship traffic in the Bay of Fundy was associated with decreased stress in North Atlantic right whales. These and other studies lead to a reasonable expectation that some marine mammals will experience physiological stress responses upon exposure to acoustic stressors and that it is possible that some of these would be classified as "distress." In addition, any animal experiencing TTS would likely also experience stress responses (NRC, 2003).

4. *Auditory masking*—Sound can disrupt behavior through masking, or interfering with, an animal's ability to detect, recognize, or discriminate between acoustic signals of interest (*e.g.*, those used for intraspecific communication and social interactions, prey detection, predator avoidance, navigation) (Richardson *et al.*, 1995). Masking occurs when the receipt of a sound is interfered with by another coincident sound at similar frequencies and at similar or higher intensity, and may occur whether the sound is natural (*e.g.*, snapping shrimp, wind, waves, precipitation) or anthropogenic (*e.g.*, shipping, sonar, seismic exploration) in origin. The ability of a noise source to mask biologically important sounds depends on the characteristics of both the noise source and the signal of interest (*e.g.*, signal-to-noise ratio, temporal variability, direction), in relation to each other and to an animal's hearing abilities (*e.g.*, sensitivity, frequency range, critical ratios, frequency discrimination, directional discrimination, age or TTS hearing loss), and existing ambient noise and propagation conditions.

Under certain circumstances, marine mammals experiencing significant masking could also be impaired from maximizing their performance fitness in survival and reproduction. Therefore, when the coincident (masking) sound is man-made, it may be considered harassment when disrupting or altering critical behaviors. It is important to distinguish TTS and PTS, which persist after the sound exposure, from masking, which occurs during the sound exposure. Because masking (without resulting in TS) is not associated with abnormal physiological function, it is not considered a physiological effect, but rather a potential behavioral effect.

The frequency range of the potentially masking sound is important in determining any potential behavioral impacts. For example, low-frequency signals may have less effect on high-frequency echolocation sounds produced by odontocetes but are more likely to affect detection of mysticete communication calls and other potentially important natural sounds such as those produced by surf and some prey species. The masking of communication signals by anthropogenic noise may be considered as a reduction in the communication space of animals (*e.g.*, Clark *et al.*, 2009) and may result in energetic or other costs as animals change their vocalization behavior (*e.g.*, Miller *et al.*, 2000; Foote *et al.*, 2004; Parks *et al.*, 2007b; Di Iorio and Clark, 2009; Holt *et al.*, 2009). Masking can be reduced in situations where the signal and noise come from different directions (Richardson *et al.*, 1995), through amplitude modulation of the signal, or through other compensatory behaviors (Houser and Moore, 2014). Masking can be tested directly in captive species (*e.g.*, Erbe, 2008), but in wild populations it must be either modeled or inferred from evidence of masking compensation. There are few studies addressing real-world masking sounds likely to be experienced by marine mammals in the wild (*e.g.*, Branstetter *et al.*, 2013).

Masking affects both senders and receivers of acoustic signals and can potentially have long-term chronic effects on marine mammals at the population level as well as at the individual level. Low-frequency ambient sound levels have increased by as much as 20 dB (more than three times in terms of SPL) in the world's ocean from pre-industrial periods, with most of the increase from distant commercial shipping (Hildebrand, 2009). All anthropogenic sound sources, but especially chronic and lower-frequency signals (*e.g.*, from vessel traffic), contribute to elevated ambient sound levels, thus intensifying masking.

Potential Effects of Pile Driving Sound—The effects of sounds from pile driving might include one or more of the following: Temporary or permanent hearing impairment, non-auditory physical or physiological effects, behavioral disturbance, and masking (Richardson *et al.*, 1995; Gordon *et al.*, 2003; Nowacek *et al.*, 2007; Southall *et al.*, 2007). The effects of pile driving on marine mammals are dependent on several factors, including the type and depth of the animal; the pile size and type, and the intensity and duration of the pile driving sound; the depth of the water column; the substrate; the standoff distance between the pile and the animal; and the sound propagation properties of the environment. Impacts to marine mammals from pile driving activities are expected to result primarily from acoustic pathways. As such, the degree of effect is intrinsically related to the frequency, received level, and duration of the sound exposure, which are in turn influenced by the distance between the animal and the source. The further away from the source, the less intense the exposure should be. The substrate and depth of the habitat affect the sound propagation properties of the environment. In addition, substrates that are soft (*e.g.*, sand) would absorb or attenuate the sound more readily than hard substrates (*e.g.*, rock) which may reflect the acoustic wave. Soft porous substrates would also likely require less time to drive the pile, and possibly less forceful equipment, which would ultimately decrease the intensity of the acoustic source.

In the absence of mitigation, impacts to marine species could be expected to include physiological and behavioral responses to the acoustic signature (Viada *et al.*, 2008). Potential effects from impulsive sound sources like pile driving can range in severity from effects such as behavioral disturbance to temporary or permanent hearing impairment (Yelverton *et al.*, 1973).

Hearing Impairment and Other Physical Effects—Marine mammals exposed to high intensity sound repeatedly or for prolonged periods can experience hearing threshold shifts. Marine mammals depend on acoustic cues for vital biological functions, (*e.g.*, orientation, communication, finding prey, avoiding predators); thus, TTS may result in reduced fitness in survival and reproduction. However, this depends on the frequency and duration of TTS, as well as the biological context in which it occurs. PTS constitutes injury, but TTS does not (Southall *et al.*, 2007). Based on the best scientific information available, the SPLs for the construction activities in this project are far below the thresholds that could cause TTS or the onset of PTS: 180 dB re 1 μPa rms for odontocetes and 190 dB re 1 μPa rms for pinnipeds (Table 3).

Non-auditory Physiological Effects—Non-auditory physiological effects or injuries that theoretically might occur in marine mammals exposed to strong underwater sound include stress, neurological effects, bubble formation, resonance effects, and other types of organ or tissue damage (Cox *et al.*, 2006; Southall *et al.*, 2007). Studies examining such effects are limited. In general, little is known about the potential for pile driving to cause auditory impairment or other physical effects in marine mammals. Available data suggest that such effects, if they occur at all, would presumably be limited to short distances from the sound source and to activities that extend over a prolonged period. The available data do not allow identification of a specific exposure level above which non-auditory effects can be expected (Southall *et al.*, 2007) or any meaningful quantitative predictions of the numbers (if any) of marine mammals that might be affected in those ways. Marine mammals that show behavioral avoidance of pile driving, including some odontocetes and some pinnipeds, are especially unlikely to incur auditory impairment or non-auditory physical effects.

Disturbance Reactions—Disturbance includes a variety of effects, including subtle changes in behavior, more conspicuous changes in activities, and displacement. Behavioral thresholds are 160 dB for impulsive sources is 120 dB for continuous sources (Table 3). Behavioral responses to sound are highly variable and context-specific and reactions, if any, depend on species, state of maturity, experience, current activity, reproductive state, auditory sensitivity, time of day, and many other factors (Richardson *et al.*, 1995; Wartzok *et al.*, 2003; Southall *et al.*, 2007). Behavioral state may affect the type of response as well. For example, animals that are resting may show greater behavioral change in response to disturbing sound levels than animals that are highly motivated to remain in an area for feeding (Richardson *et al.*, 1995; NRC, 2003; Wartzok *et al.*, 2003).

Responses to continuous sound, such as vibratory pile installation, have not been documented as well as responses to pulsed sounds. With both types of pile driving, it is likely that the onset of pile driving could result in temporary, short term changes in an animal's typical behavior and/or avoidance of the affected area. These behavioral changes may include (Richardson *et al.*, 1995): Changing durations of surfacing and dives, number of blows per surfacing, or moving direction and/or speed; reduced/increased vocal activities; changing/cessation of certain behavioral activities (such as socializing or feeding); visible startle response or aggressive behavior (such as tail/fluke slapping or jaw clapping); avoidance of areas where sound sources are located; and/or flight responses (*e.g.*, pinnipeds flushing into water from haul-outs or rookeries). Pinnipeds may increase their haul-out time, possibly to avoid in-water disturbance (Thorson and Reyff, 2006).

The biological significance of many of these behavioral disturbances is difficult to predict, especially if the detected disturbances appear minor. However, the consequences of behavioral modification could be expected to be biologically significant if the change affects growth, survival, or reproduction. Significant behavioral modifications that could potentially lead to effects on growth, survival, or reproduction include:

- Drastic changes in diving/surfacing patterns (such as those thought to cause beaked whale stranding due to exposure to military mid-frequency tactical sonar);
- Longer-term habitat abandonment due to loss of desirable acoustic environment; and
- Longer-term cessation of feeding or social interaction.

The onset of behavioral disturbance from anthropogenic sound depends on both external factors (characteristics of sound sources and their paths) and the specific characteristics of the receiving animals (hearing, motivation, experience, demography) and is difficult to predict (Southall *et al.*, 2007).

Auditory Masking—Natural and artificial sounds can disrupt behavior by masking. The frequency range of the potentially masking sound is important in determining any potential behavioral impacts. Because sound generated from in-water pile driving is mostly concentrated at low frequency ranges, it may have less effect on high frequency echolocation sounds made by porpoises. The most intense underwater sounds in the proposed action are those produced by impact pile driving. Given that the energy distribution of pile driving covers a broad frequency spectrum, sound from these sources would likely be within the audible range of marine mammals present in the project area. Impact pile driving activity is relatively short-term, with rapid pulses occurring for approximately fifteen minutes per pile. The probability for impact pile driving resulting from this proposed action masking acoustic signals important to the behavior and survival of marine mammal species is low. Vibratory pile driving is also relatively short-term, with rapid oscillations occurring for approximately one and a half hours per pile. It is possible that vibratory pile driving resulting from this proposed action may mask acoustic signals important to the behavior and survival of marine mammal species, but the short-term duration and limited affected area would result in insignificant impacts from masking. Any masking event that could possibly rise to Level B harassment under the MMPA would occur concurrently within the zones of behavioral harassment already estimated for vibratory and impact pile driving, and which have already been taken into account in the exposure analysis.

Acoustic Effects, Airborne—Marine mammals that occur in the project area could be exposed to airborne sounds associated with pile driving that have the potential to cause harassment, depending on their distance from pile driving activities. Airborne behavioral thresholds are 90 dB for harbor seals, and 100 dB for all other pinnipeds (Table 3). Airborne pile driving sound would have less impact on cetaceans than pinnipeds because sound from atmospheric sources does not transmit well underwater (Richardson *et al.*, 1995); thus, airborne sound would only be an issue for pinnipeds either hauled-out or looking with heads above water in the project area. Most likely, airborne sound would cause behavioral responses similar to those discussed above in relation to underwater sound. For instance, anthropogenic sound could cause hauled-out pinnipeds to exhibit changes in their normal behavior, such as reduction in vocalizations, or cause them to temporarily abandon the area and move further from the source.

Anticipated Effects on Marine Mammal Habitat

The proposed activities at AIRSTA/SFO Port Angeles would not result in permanent impacts to habitats used directly by marine mammals, such as haul-out sites, but may have potential short-term impacts to food sources such as forage fish and salmonids. The only rookeries or major haul-out sites in close proximity to the project site are harbor seal haul-outs located approximately 1.7 miles (2.7 km) west, and another 1.3 miles (2.1 km) south of the project site. The next closest rookery or major haul-out site is 11.2 miles (18 km) away. The nearest Steller sea lion haul-out to the project site is approximately 12.5 miles (20 km) across the Strait of Juan de Fuca at Race Rocks. There are no ocean bottom structures of significant biological importance to marine mammals that may be present in the marine waters in the vicinity of the project area. Therefore, the main impact associated with the proposed activity would be temporarily elevated sound levels and the associated direct effects on marine mammals, as discussed previously in this document. The most likely impact to marine mammal habitat occurs from pile driving effects on likely marine mammal prey (*i.e.*, fish) near AIRSTA/SFO Port Angeles and minor impacts to the immediate substrate during installation and removal of piles during the wharf construction project. Temporary and localized reduction in water quality could occur as a result of in-water construction activities during the installation and removal of piles when bottom sediments are disturbed. Effects on turbidity and sedimentation are expected to be short-term and not result in any measurable effects on marine mammals and their habitat.

Pile Driving Effects on Potential Prey

Construction activities would produce both pulsed (*i.e.*, impact pile driving) and continuous (*i.e.*, vibratory pile driving) sounds. Fish react to sounds which are especially strong and/or intermittent low-frequency sounds. Short duration, sharp sounds can cause overt or subtle changes in fish behavior and local distribution. Hastings and Popper (2005) identified several studies that suggest fish may relocate to avoid certain areas of sound energy. Additional studies have documented effects of pile driving on fish, although several are based on studies in support of large, multiyear bridge construction projects (*e.g.*, Scholik and Yan, 2001, 2002; Popper and Hastings, 2009). Sound pulses at received levels of 160 dB may cause subtle changes in fish behavior. SPLs of 180 dB may cause noticeable changes in behavior (Pearson *et al.*, 1992; Skalski *et al.*, 1992). SPLs of sufficient strength have been known to cause injury to fish and fish mortality. The most likely impact to fish from pile driving activities at the project area would be temporary behavioral avoidance of the area. The duration of fish avoidance of this area after pile driving stops is unknown, but a rapid return to normal recruitment, distribution and behavior is anticipated. In general, impacts to marine mammal prey species are expected to be minor and temporary due to the short timeframe for the wharf construction project. However, adverse impacts may occur to a few species of rockfish and salmon, which may still be present in the project area despite operating in a reduced work window in an attempt to avoid important fish spawning time periods. Impacts to these species could result from potential impacts to their eggs and larvae; however, impacts are not anticipated to be permanent or significant.

Pile Driving Effects on Potential Foraging Habitat

The area likely impacted by the project is relatively small compared to the available habitat in the Port Angeles Harbor. Avoidance by potential prey (*i.e.*, fish) of the immediate area due to the temporary loss of this foraging habitat is also possible. The duration of fish avoidance of this area after pile driving stops is unknown, but a rapid return to normal recruitment, distribution and behavior is anticipated. Any behavioral avoidance by fish of the disturbed area would still leave significantly large areas of fish and marine mammal foraging habitat in the Port Angeles Harbor and nearby vicinity.

In summary, given the short daily duration of sound associated with individual pile driving events and the relatively small areas being affected, pile driving activities associated with the proposed action are not likely to have a permanent, adverse effect on any fish habitat, or populations of fish species. Thus, any impacts to marine mammal habitat are not expected to cause significant or long-term consequences for individual marine mammals or their populations.

Proposed Mitigation

In order to issue an IHA under section 101(a)(5)(D) of the MMPA, NMFS must set forth the permissible methods of taking pursuant to such activity, and other means of effecting the least practicable impact on such species or stock and its habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance, and on the availability of such species or stock for taking for certain subsistence uses.

Measurements from similar pile driving events were coupled with practical spreading loss to estimate zones of influence (ZOI; see Estimated Take by Incidental Harassment); these values were used to develop mitigation measures for pile driving activities at Port Angeles harbor. The ZOIs effectively represent the mitigation zone that would be established around each pile to prevent Level A harassment to marine mammals, while providing estimates of the areas within which Level B harassment might occur. In addition to the specific measures described later in this section, the Navy would conduct briefings between construction supervisors and crews, marine mammal monitoring team, and Navy staff prior to the start of all pile driving activity, and when new personnel join the work, in order to explain responsibilities, communication procedures, marine mammal monitoring protocol, and operational procedures.

Mitigation Monitoring and Shutdown for Pile Driving

The following measures would apply to the Navy's mitigation through shutdown and disturbance zones:

Shutdown Zone—For all pile driving activities, the Navy will establish a shutdown zone intended to contain the area in which SPLs equal or exceed the 180/190 dB rms acoustic injury criteria. The purpose of a shutdown zone is to define an area within which shutdown of activity would occur upon sighting of a marine mammal (or in anticipation of an animal entering the defined area), thus preventing injury of marine mammals. Modeled distances for shutdown zones (the area in which SPLs equal or exceed the 180/190 dB rms) are shown in Table 6. However, during impact pile driving, the Navy would implement a minimum shutdown zone of 30 m radius for cetaceans and 10 m radius for pinnipeds around all pile driving activity. The modeled injury threshold distances are approximately 29 m and 6 m, respectively. During vibratory driving, the shutdown zone would be 10 m distance from the source for all animals. These precautionary measures are intended to further reduce any possibility of acoustic injury, as well as to account for any undue reduction in the modeled zones stemming from the assumption of 6 dB attenuation from use of a bubble curtain (see discussion later in this section).

Disturbance Zone—Disturbance zones are the areas in which SPLs equal or exceed 160 and 120 dB rms (for pulsed and non-pulsed continuous sound, respectively). Disturbance zones provide utility for monitoring conducted for mitigation purposes (*i.e.*, shutdown zone monitoring) by establishing monitoring protocols for areas adjacent to the shutdown zones. Monitoring of disturbance zones enables observers to be aware of and communicate the presence of marine mammals in the project area but outside the shutdown zone and thus prepare for potential shutdowns of activity. However, the primary purpose of disturbance zone monitoring is for documenting incidents of Level B harassment; disturbance zone monitoring is discussed in greater detail later (see "Proposed Monitoring and Reporting"). Nominal radial distances for disturbance zones are shown in Table 6. Given the size of the disturbance zone for vibratory pile driving, it is impossible to guarantee that all animals would be observed or to make comprehensive observations of fine-scale behavioral reactions to sound, and only a portion of the zone will be monitored.

In order to document observed incidents of harassment, monitors record all marine mammal observations, regardless of location. The observer's location, as well as the location of the pile being driven, is known from a GPS. The location of the animal is estimated as a distance from the observer, which is then compared to the location from the pile. The received level may be estimated on the basis of past or subsequent acoustic monitoring. It may then be determined whether the animal was exposed to sound levels constituting incidental harassment in post-processing of observational data, and a precise accounting of observed incidents of harassment created. Therefore, although the predicted distances to behavioral harassment thresholds are useful for estimating harassment for purposes of authorizing levels of incidental take, actual take may be determined in part through the use of empirical data. That information may then be used to extrapolate observed takes to reach an approximate understanding of actual total takes.

Monitoring Protocols—Monitoring would be conducted before, during, and after pile driving activities. In addition, observers shall record all incidents of marine mammal occurrence, regardless of distance from activity, and shall document any behavioral reactions in concert with distance from piles being driven. Observations made outside the shutdown zone will not result in shutdown; that pile segment would be completed without cessation, unless the animal approaches or enters the shutdown zone, at which point all pile driving activities would be halted. Monitoring will take place from fifteen minutes prior to initiation through thirty minutes post-completion of pile driving activities. Pile driving activities include the time to remove a single pile or series of piles, as long as the time elapsed between uses of the pile driving equipment is no more than thirty minutes. Please see the Marine Mammal Monitoring Plan (available at *www.nmfs.noaa.gov/pr/permits/incidental.htm*), developed by the Navy with our approval, for full details of the monitoring protocols.

The following additional measures apply to visual monitoring:

(1) Monitoring will be conducted by qualified observers, who will be placed at the best vantage point(s) practicable to monitor for marine mammals and implement shutdown/delay procedures when applicable by calling for the shutdown to the hammer operator. Qualified observers are trained biologists, with the following minimum qualifications:

- Visual acuity in both eyes (correction is permissible) sufficient for discernment of moving targets at the water's surface with ability to estimate target size and distance; use of binoculars may be necessary to correctly identify the target;
- Advanced education in biological science or related field (undergraduate degree or higher required);
- Experience and ability to conduct field observations and collect data according to assigned protocols (this may include academic experience);
- Experience or training in the field identification of marine mammals, including the identification of behaviors;
- Sufficient training, orientation, or experience with the construction operation to provide for personal safety during observations;
- Writing skills sufficient to prepare a report of observations including but not limited to the number and species of marine mammals observed; dates and times when in-water construction activities were conducted; dates and times when in-water construction activities were suspended to avoid potential incidental injury from construction sound of marine mammals observed within a defined shutdown zone; and marine mammal behavior; and
- Ability to communicate orally, by radio or in person, with project personnel to provide real-time information on marine mammals observed in the area as necessary.

(2) Prior to the start of pile driving activity, the shutdown zone will be monitored for fifteen minutes to ensure that it is clear of marine mammals. Pile driving will only commence once observers have declared the shutdown zone clear of marine mammals; animals will be allowed to remain in the shutdown zone (*i.e.,* must leave of their own volition) and their behavior will be monitored and documented. The shutdown zone may only be declared clear, and pile driving started, when the entire shutdown zone is visible (*i.e.,* when not obscured by dark, rain, fog, etc.). In addition, if such conditions should arise during impact pile driving that is already underway, the activity would be halted.

(3) If a marine mammal approaches or enters the shutdown zone during the course of pile driving operations, activity will be halted and delayed until either the animal has voluntarily left and been visually confirmed beyond the shutdown zone or fifteen minutes have passed without re-detection of the animal. Monitoring will be conducted throughout the time required to drive a pile.

Sound Attenuation Devices

Sound levels can be greatly reduced during impact pile driving using sound attenuation devices. There are several types of sound attenuation devices including bubble curtains, cofferdams, and isolation casings (also called temporary noise attenuation piles [TNAP]), and cushion blocks. The Navy proposes to use bubble curtains, which create a column of air bubbles rising around a pile from the substrate to the water surface. The air bubbles absorb and scatter sound waves emanating from the pile, thereby reducing the sound energy. Bubble curtains may be confined or unconfined. An unconfined bubble curtain may consist of a ring seated on the substrate and emitting air bubbles from the bottom. An unconfined bubble curtain may also consist of a stacked system, that is, a series of multiple rings placed at the bottom and at various elevations around the pile. Stacked systems may be more effective than non-stacked systems in areas with high current and deep water (Oestman *et al.,* 2009).

A confined bubble curtain contains the air bubbles within a flexible or rigid sleeve made from plastic, cloth, or pipe. Confined bubble curtains generally offer higher attenuation levels than unconfined curtains because they may physically block sound waves and they prevent air bubbles from migrating away from the pile. For this reason, the confined bubble curtain is commonly used in areas with high current velocity (Oestman *et al.,* 2009).

Both environmental conditions and the characteristics of the sound attenuation device may influence the effectiveness of the device. According to Oestman *et al.* (2009):

- In general, confined bubble curtains attain better sound attenuation levels in areas of high current than unconfined bubble curtains. If an unconfined device is used, high current velocity may sweep bubbles away from the pile, resulting in reduced levels of sound attenuation.
- Softer substrates may allow for a better seal for the device, preventing leakage of air bubbles and escape of sound waves. This increases the effectiveness of the device. Softer substrates also provide additional attenuation of sound traveling through the substrate.
- Flat bottom topography provides a better seal, enhancing effectiveness of the sound attenuation device, whereas sloped or undulating terrain reduces or eliminates its effectiveness.
- Air bubbles must be close to the pile; otherwise, sound may propagate into the water, reducing the effectiveness of the device.
- Harder substrates may transmit ground-borne sound and propagate it into the water column.

The literature presents a wide array of observed attenuation results for bubble curtains (*e.g.,* Oestman *et al.,* 2009; Coleman, 2011; see Table 3–2 in

Appendix A of the Navy's application). The variability in attenuation levels is due to variation in design, as well as differences in site conditions and difficulty in properly installing and operating in-water attenuation devices. As a general rule, reductions of greater than 10 dB cannot be reliably predicted. For 36-in piles the average rms reduction with use of the bubble curtain was nine dB, where the averages of all bubble-on and bubble-off data were compared. For 48-in piles, the average SPL reduction with use of a bubble curtain was seven dB for average rms values (see Table 3–1 in Appendix A of the Navy's application).

To avoid loss of attenuation from design and implementation errors, the Navy has required specific bubble curtain design specifications, including testing requirements for air pressure and flow prior to initial impact hammer use, and a requirement for placement on the substrate. Bubble curtains shall be used during all impact pile driving. The device will distribute air bubbles around 100 percent of the piling perimeter for the full depth of the water column, and the lowest bubble ring shall be in contact with the mudline for the full circumference of the ring. We considered eight dB as potentially the best estimate of average SPL (rms) reduction, assuming appropriate deployment and no problems with the equipment. Therefore, an eight dB reduction was used in the Navy's analysis of pile driving noise in the environmental analyses.

Timing Restrictions

In Port Angeles Harbor, designated timing restrictions exist for pile driving activities to avoid in-water work when salmonids and other spawning forage fish are likely to be present. The in-water work window is November 1, 2016–February 15, 2017, and July 16–October 31, 2017. All in-water construction activities will occur during daylight hours (sunrise to sunset) except from July 16 to February 15 when impact pile driving/removal will only occur starting 2 hours after sunrise and ending 2 hours before sunset, to protect foraging marbled murrelets during nesting season (April 1–September 23). Other construction (not in-water) may occur between 7 a.m. and 10 p.m., year-round.

Soft Start

The use of a soft-start procedure is believed to provide additional protection to marine mammals by warning or providing a chance to leave the area prior to the hammer operating at full capacity, and typically involves a requirement to initiate sound from vibratory hammers for fifteen seconds at reduced energy followed by a thirty-second waiting period. This procedure is repeated two additional times.

Implementation of soft start for vibratory pile driving during previous pile driving work for the Explosives Handling Wharf at Fort Hood Navy Base Kitsap Bangor led to equipment failure and serious human safety concerns, which resulted in discontinuation of the soft-start procedure for vibratory pile driving. The Marine Mammal Commission has stated that the soft-start is a viable, effective component of a mitigation plan designed to effect the least practicable impact on marine mammals. In response to this concern, NMFS formed a working group with the Navy in April 2014 to address the soft-start procedures. At this time, the EHW–2 project is the only project where the procedure has been waived.

For this proposed IHA, as a result of this potential low risk to human safety, we have determined vibratory soft start to be practicable, but if unsafe working conditions during soft-starts are reported by the contractor and verified by an independent safety inspection, the Navy may elect to discontinue vibratory soft-starts.

For impact driving, soft start will be required, and contractors will provide an initial set of strikes from the impact hammer at reduced energy, followed by a thirty-second waiting period, then two subsequent reduced energy strike sets. The reduced energy of an individual hammer cannot be quantified because of variation in individual drivers. The actual number of strikes at reduced energy will vary because operating the hammer at less than full power results in "bouncing" of the hammer as it strikes the pile, resulting in multiple "strikes." Soft start for impact driving will be required at the beginning of each day's pile driving work and at any time following a cessation of impact pile driving of thirty minutes or longer.

We have carefully evaluated the Navy's proposed mitigation measures and considered their effectiveness in past implementation to preliminarily determine whether they are likely to effect the least practicable impact on the affected marine mammal species and stocks and their habitat. Our evaluation of potential measures included consideration of the following factors in relation to one another: (1) The manner in which, and the degree to which, the successful implementation of the measure is expected to minimize adverse impacts to marine mammals, (2) the proven or likely efficacy of the specific measure to minimize adverse impacts as planned; and (3) the practicability of the measure for applicant implementation.

Any mitigation measure(s) we prescribe should be able to accomplish, have a reasonable likelihood of accomplishing (based on current science), or contribute to the accomplishment of one or more of the general goals listed below:

(1) Avoidance or minimization of injury or death of marine mammals wherever possible (goals 2, 3, and 4 may contribute to this goal).

(2) A reduction in the number (total number or number at biologically important time or location) of individual marine mammals exposed to stimuli expected to result in incidental take (this goal may contribute to 1, above, or to reducing takes by behavioral harassment only).

(3) A reduction in the number (total number or number at biologically important time or location) of times any individual marine mammal would be exposed to stimuli expected to result in incidental take (this goal may contribute to 1, above, or to reducing takes by behavioral harassment only).

(4) A reduction in the intensity of exposure to stimuli expected to result in incidental take (this goal may contribute to 1, above, or to reducing the severity of behavioral harassment only).

(5) Avoidance or minimization of adverse effects to marine mammal habitat, paying particular attention to the prey base, blockage or limitation of passage to or from biologically important areas, permanent destruction of habitat, or temporary disturbance of habitat during a biologically important time.

(6) For monitoring directly related to mitigation, an increase in the probability of detecting marine mammals, thus allowing for more effective implementation of the mitigation.

Based on our evaluation of the Navy's proposed measures, we have preliminarily determined that the proposed mitigation measures provide the means of effecting the least practicable impact on marine mammal species or stocks and their habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance.

Proposed Monitoring and Reporting

In order to issue an IHA for an activity, section 101(a)(5)(D) of the MMPA states that NMFS must set forth "requirements pertaining to the monitoring and reporting of such taking". The MMPA implementing regulations at 50 CFR 216.104 (a)(13) indicate that requests for incidental take authorizations must include the suggested means of accomplishing the necessary monitoring and reporting that will result in increased knowledge of the species and of the level of taking or impacts on populations of marine mammals that are expected to be present in the proposed action area.

Any monitoring requirement we prescribe should accomplish one or more of the following general goals:

1. An increase in the probability of detecting marine mammals, both within defined zones of effect (thus allowing for more effective implementation of the mitigation) and in general to generate more data to contribute to the analyses mentioned below;
2. An increase in our understanding of how many marine mammals are likely to be exposed to stimuli that we associate with specific adverse effects, such as behavioral harassment or hearing threshold shifts;
3. An increase in our understanding of how marine mammals respond to stimuli expected to result in incidental take and how anticipated adverse effects on individuals may impact the population, stock, or species (specifically through effects on annual rates of recruitment or survival) through any of the following methods:
   - Behavioral observations in the presence of stimuli compared to observations in the absence of stimuli (need to be able to accurately predict pertinent information, *e.g.,* received level, distance from source);
   - Physiological measurements in the presence of stimuli compared to observations in the absence of stimuli (need to be able to accurately predict pertinent information, *e.g.,* received level, distance from source);
   - Distribution and/or abundance comparisons in times or areas with concentrated stimuli versus times or areas without stimuli;
4. An increased knowledge of the affected species; or
5. An increase in our understanding of the effectiveness of certain mitigation and monitoring measures.

The Navy submitted a marine mammal monitoring plan as part of the IHA application for this project. It can be found on the Internet at *www.nmfs.noaa.gov/pr/permits/incidental.htm.* The plan may be modified or supplemented based on comments or new information received from the public during the public comment period.

Visual Marine Mammal Observations

The Navy will collect sighting data and behavioral responses to construction for marine mammal species observed in the region of activity during the period of activity. All observers will be trained in marine mammal identification and behaviors and are required to have no other construction-related tasks while conducting monitoring. The Navy will monitor the shutdown zone and disturbance zone before, during, and after pile driving, with observers located at the best practicable vantage points. Based on our requirements, the Marine Mammal Monitoring Plan would implement the following procedures for pile driving:

- A minimum of three Marine Mammal Observers (protected species observers [PSOs]) would be present during both impact and vibratory pile driving/removal and would be located at the best vantage point(s) in order to properly see the entire shutdown zone and as much of the disturbance zone as possible.
- During all observation periods, observers will use binoculars and the naked eye to search continuously for marine mammals.
- If the shutdown zones are obscured by fog or poor lighting conditions, pile driving at that location will not be initiated until that zone is visible. Should such conditions arise while impact driving is underway, the activity would be halted.
- The shutdown and disturbance zones around the pile will be monitored for the presence of marine mammals before, during, and after any pile driving or removal activity.

Individuals implementing the monitoring protocol will assess its effectiveness using an adaptive approach. Monitoring biologists will use their best professional judgment throughout implementation and seek improvements to these methods when deemed appropriate. Any modifications to protocol will be coordinated between NMFS and the Navy.

Data Collection

We require that observers use approved data forms. Among other pieces of information, the Navy will record detailed information about any implementation of shutdowns, including the distance of animals to the pile and description of specific actions that ensued and resulting behavior of the animal, if any. In addition, the Navy will attempt to distinguish between the number of individual animals taken and the number of incidents of take. We require that, at a minimum, the following information be collected on the sighting forms:

- Date and time that monitored activity begins or ends;
- Construction activities occurring during each observation period;
- Weather parameters (*e.g.,* percent cover, visibility);
- Water conditions (*e.g.,* sea state, tide state);
- Species, numbers, and, if possible, sex and age class of marine mammals;
- Description of any observable marine mammal behavior patterns, including bearing and direction of travel and distance from pile driving activity;
- Distance from pile driving activities to marine mammals and distance from the marine mammals to the observation point;
- Locations of all marine mammal observations; and
- Other human activity in the area.

Reporting

A draft report would be submitted within ninety calendar days of the completion of the in-water work window. The report will include marine mammal observations pre-activity, during-activity, and post-activity during pile driving days, and will also provide descriptions of any problems encountered in deploying sound attenuating devices, any behavioral responses to construction activities by marine mammals and a complete description of all mitigation shutdowns and the results of those actions and an extrapolated total take estimate based on the number of marine mammals observed during the course of construction. A final report must be submitted within thirty days following resolution of comments on the draft report.

Estimated Take by Incidental Harassment

Except with respect to certain activities not pertinent here, section 3(18) of the MMPA defines "harassment" as: ". . . any act of pursuit, torment, or annoyance which (i) has the potential to injure a marine mammal or marine mammal stock in the wild [Level A harassment]; or (ii) has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering [Level B harassment]."

All anticipated takes would be by Level B harassment resulting from vibratory and impact pile driving and involving temporary changes in behavior. The proposed mitigation and monitoring measures are expected to minimize the possibility of injurious or lethal takes such that take by Level A harassment, serious injury, or mortality is considered discountable. However, it is unlikely that injurious or lethal takes would occur even in the absence of the planned mitigation and monitoring measures.

Low level responses to sound (*e.g.,* short-term avoidance of an area, short-term changes in locomotion or vocalization) are less likely to result in fitness effects on individuals that would ultimately affect the stock or the species as a whole. However, if a sound source displaces marine mammals from an important feeding or breeding area for a prolonged period, impacts on individual animals could potentially be significant and could potentially translate to affects on annual rates of recruitment or survival (*e.g.,* Lusseau and Bejder, 2007; Weilgart, 2007). Specific understanding of the activity and the effected species are necessary to predict the severity of impacts and the likelihood of fitness impacts, however, we start with the estimated number of takes, understanding that additional analysis is needed to understand what those takes mean. Given the many uncertainties in predicting the quantity and types of impacts of sound on marine mammals, it is common practice to estimate how many animals are likely to be present within a particular distance of a given activity, or exposed to a particular level of sound, taking the duration of the activity into consideration. This practice provides a good sense of the number of instances of take, but potentially overestimates the numbers of individual marine mammals taken. In particular, for stationary activities, it is more likely that some smaller number of individuals may accrue a number of incidences of harassment per individual than for each incidence to accrue to a new individual, especially if those individuals display some degree of residency or site fidelity and the impetus to use the site (*e.g.,* because of foraging opportunities) is stronger than the deterrence presented by the harassing activity.

The project area is not believed to be particularly important habitat for marine mammals, nor is it considered an area frequented by marine mammals. Therefore, behavioral disturbances that could result from anthropogenic sound associated with these activities are expected to affect only a relatively small number of individual marine mammals, although those effects could be recurring over the life of the project if the same individuals remain in the project vicinity.

The Navy has requested authorization for the incidental taking of small numbers of Steller sea lions, California sea lions, harbor seals, Northern elephant seals, and harbor porpoises in Port Angeles Harbor that may result from pile driving during construction activities associated with the pier construction and support facilities project described previously in this document. In order to estimate the potential incidents of take that may occur incidental to the specified activity, we must first estimate the extent of the sound field that may be produced by the activity and then consider in combination with information about marine mammal density or abundance in the project area. We first provide information on applicable sound thresholds for determining effects to marine mammals before describing the information used in estimating the sound fields, the available marine mammal density or abundance information, and the method of estimating potential incidences of take.

Sound Thresholds

We use generic sound exposure thresholds to determine when an activity that produces sound might result in impacts to a marine mammal such that a take by harassment might occur (Table 3). To date, no studies have been conducted that explicitly examine impacts to marine mammals from pile driving sounds or from which empirical sound thresholds have been established. These thresholds should be considered guidelines for estimating when harassment may occur (*i.e.,* when an animal is exposed to levels equal to or exceeding the relevant criterion) in specific contexts; however, useful contextual information that may inform our assessment of effects is typically lacking and we consider these thresholds as step functions. NMFS is currently revising these acoustic guidelines; for more information on that process, please visit *www.nmfs.noaa.gov/pr/acoustics/guidelines.htm.* Vibratory pile driving produces continuous noise and impact pile driving produces impulsive noise.

TABLE 3—CURRENT ACOUSTIC EXPOSURE CRITERIA

Criterion	Definition	Threshold
Level A harassment (underwater)	Injury (PTS—any level above that which is known to cause TTS).	180 dB (cetaceans)/190 dB (pinnipeds) (rms).
Level B harassment (underwater)	Behavioral disruption	160 dB (impulsive source)/120 dB (continuous source) (rms).
Level B harassment (airborne) *	Behavioral disruption	90 dB (harbor seals)/100 dB (other pinnipeds) (unweighted).

* NMFS has not established any formal criteria for harassment resulting from exposure to airborne sound. However, these thresholds represent the best available information regarding the effects of pinniped exposure to such sound and NMFS' practice is to associate exposure at these levels with Level B harassment.

Distance to Sound Thresholds

Underwater Sound Propagation Formula—Pile driving generates underwater noise that can potentially result in disturbance to marine mammals in the project area. Transmission loss (TL) is the decrease in acoustic intensity as an acoustic pressure wave propagates out from a source. TL parameters vary with frequency, temperature, sea conditions, current, source and receiver depth, water depth, water chemistry, and bottom composition and topography. The general formula for underwater TL is:

$$TL = B * \log_{10}(R_1/R_2),$$

where

R_1 = the distance of the modeled SPL from the driven pile, and
R_2 = the distance from the driven pile of the initial measurement.

This formula neglects loss due to scattering and absorption, which is assumed to be zero here. The degree to which underwater sound propagates away from a sound source is dependent on a variety of factors, most notably the water bathymetry and presence or absence of reflective or absorptive conditions including in-water structures and sediments. Spherical spreading occurs in a perfectly unobstructed (free-field) environment not limited by depth or water surface, resulting in a 6 dB reduction in sound level for each doubling of distance from the source (20*log[range]). Cylindrical spreading occurs in an environment in which sound propagation is bounded by the water surface and sea bottom, resulting in a reduction of 3 dB in sound level for each doubling of distance from the source (10*log[range]). A practical spreading value of fifteen is often used under conditions, such as Port Angeles Harbor, where water increases with depth as the receiver moves away from the shoreline, resulting in an expected propagation environment that would lie between spherical and cylindrical spreading loss conditions. Practical spreading loss (4.5 dB reduction in sound level for each doubling of distance) is assumed here.

Underwater Sound—The intensity of pile driving sounds is greatly influenced by factors such as the type of piles, hammers, and the physical environment in which the activity takes place. A large quantity of literature regarding SPLs recorded from pile driving projects is available for consideration. In order to determine reasonable SPLs and their associated effects on marine mammals that are likely to result from pile driving at AIRSTA/SFO Port Angeles, studies with similar properties to the specified activity were evaluated. SPLs from driving of 12-, 18-, 24-, 30-, and 36-in piles by impact and vibratory hammers were measured (Tables 4 and 5). All projects were located in California, Oregon, and Washington, but projects in marine waters of Puget Sound including the San Juan Islands were favored over those in the San Francisco Bay area, the mouth of the Columbia River, or coastal bays because they were more similar to the conditions at Port Angeles harbor. Overall, studies which met the following parameters were considered: (1) Pile size and materials: Steel pipe piles (24- to 36-in diameter), concrete piles (18- to 24-in diameter), timber piles (12-in diameter), steel sheet piles (24-in); (2) Hammer machinery: Vibratory and impact hammer; and (3) Physical environment: Shallow depth (less than 5 m to 15 m), similar substrate type to project area (sand/silt to sand/silt/cobbles overlying glacial till or hard clay layers).

TABLE 4—UNDERWATER SPLS FROM MONITORED CONSTRUCTION ACTIVITIES USING IMPACT HAMMERS

Pile size	Number of projects considered	Range of average rms (n-weighted pile average) dB re 1 µPa
Steel		
24-inch	2	181–198 (193)
30-inch	3	192–196 (195)
36-inch (all projects)	3	185–196 (192)
36-inch (Bangor only)	1	185–196 (194)
All 24/30/36-inch	7	181–198 (193)
Concrete		
<18-inch	3	158–173 (170)
24-inch	7	167–179 (174)

The tables presented here detail representative pile driving SPLs that have been recorded from similar construction activities in recent years. Due to the similarity of these actions and the Navy's proposed action, these values represent reasonable SPLs which could be anticipated, and which were used in the acoustic modeling and analysis. Table 4 displays SPLs measured during pile installation using an impact hammer and Table 5 displays SPLs measured during pile installation using a vibratory hammer. For impact driving, average RMS values over 24-, 30-, and 36-in piles ranged from 181 dB to 198 dB. A source value of 193 dB rms at 10 m was the average value reported from the listed studies. For vibratory pile driving, source levels ranged depending on pile type and size. At 10 m, source values of 161 dB (16- to 24-in steel pipe pile), 167 dB (30- to 36-in steel pipe pile), were used.

TABLE 5—UNDERWATER SPLS FROM MONITORED CONSTRUCTION ACTIVITIES USING VIBRATORY HAMMERS

Project and location	Pile size and type	Water depth	Measured SPLs
Vashon Terminal, WA[1]	30-in steel pipe	6 m	165 dB (rms) at 11 m.
Keystone Terminal, WA[2]	30-in steel pipe	8 m	165 dB (rms) at 10 m.
Edmonds Ferry Terminal, WA[3]	36-in steel pipe	5.8 m	162–163 dB (rms) at 10 m.
Anacortes Ferry Terminal, WA[4]	36-in steel pipe	12.7 m	168–170 dB (rms) at 10 m.
California[5]	36-in steel pipe	5 m	170 dB/175 dB (rms) at 10 m.[8]
Test Pile Program, NBKB[6]	36-in steel pipe	13.7–26.8 m	154–169 dB (rms) at 10 m.
EHW–2, Year 1, NBKB[7]	36-in steel pipe	Avg of mid- and deep-depth	169 dB (rms) at 10 m.
Test Pile Program, NBKB[6]	48-in steel pipe	13.7–26.8 m	172 dB (rms) at 10 m.
California[3]	72-in steel pipe	5 m	170 dB/180 dB (rms) at 10 m.[8]

Sources: [1] Laughlin, 2010a; [2] Laughlin, 2010b; [3] Loughlin, 2011; [4] Loughlin, 2012; [5] Caltrans, 2012; [6] Illingworth & Rodkin, 2012; [7] Illingworth & Rodkin, 2013 (See Navy application).

[8] Specific location/project unknown. Summary value possibly comprising multiple events rather than a single event. Average and maximum values presented.

All calculated distances to, and the total area encompassed by, the marine mammal sound thresholds are provided in Table 6. Although radial distance and area associated with the zone ensonified to 160 dB (the behavioral harassment threshold for pulsed sounds, such as those produced by impact driving) are presented in Table 6, this zone would be subsumed by the 120-dB zone produced by vibratory driving. Thus, behavioral harassment of marine mammals associated with impact driving is not considered further here. Since the 160-dB threshold and the 120-dB threshold both indicate behavioral harassment, pile driving effects in the two zones are equivalent. Although not considered as a likely construction scenario, if only the impact driver was operated on a given day incidental take on that day would likely be lower because the area ensonified to levels producing Level B harassment would be smaller (although actual take would be determined by the numbers of marine mammals in the area on that day).

TABLE 6—CALCULATED DISTANCE(S) TO AND AREA ENCOMPASSED BY UNDERWATER MARINE MAMMAL SOUND THRESHOLDS DURING PILE INSTALLATION

Threshold	Steel pile size	Distance	Area (km²)
Impact driving, pinniped injury (190 dB)	24-inch	5 m	0.000078
	30-inch	6 m	0.00011
	36-inch	4 m	0.00005
Impact driving, cetacean injury (180 dB)	24-inch	22 m	0.0015
	30-inch	29 m	0.0026
	36-inch	18 m	0.001
Impact driving, disturbance (160 dB)	24-inch	464 m	0.43
	30-inch	631 m	0.75
	36-inch	398 m	0.33
Vibratory driving, disturbance (120 dB)	24-inch	6,310 m	20.4
	30-inch	13,594 m	29.9
	36-inch	13,594 m	29.9

Port Angeles Harbor does not represent open water, or free field, conditions. Therefore, sounds would attenuate as they encounter land masses or bends in the canal. As a result, the calculated distance and areas of impact for the 120-dB threshold cannot actually be attained at the project area. See Figure 6–1 of the Navy's application for a depiction of the size of areas in which each underwater sound threshold is predicted to occur at the project area due to pile driving.

Airborne Sound—Pile driving can generate airborne sound that could potentially result in disturbance to marine mammals (specifically, pinnipeds) which are hauled out or at the water's surface. As a result, the Navy analyzed the potential for pinnipeds hauled out or swimming at the surface near AIRSTA/SFO Port Angeles to be exposed to airborne SPLs that could result in Level B behavioral harassment. A spherical spreading loss model (*i.e.*, 6 dB reduction in sound level for each doubling of distance from the source), in which there is a perfectly unobstructed (free-field) environment not limited by depth or water surface, is appropriate for use with airborne sound and was used to estimate the distance to the airborne thresholds.

As was discussed for underwater sound from pile driving, the intensity of pile driving sounds is greatly influenced by factors such as the type of piles, hammers, and the physical environment in which the activity takes place. In order to determine reasonable airborne SPLs and their associated effects on marine mammals that are likely to result from pile driving at AIRSTA/SFO Port Angeles, studies with similar properties to the proposed action, as described previously, were evaluated. Table 7 details representative pile driving activities that have occurred in recent years. Due to the similarity of these actions and the Navy's proposed action, they represent reasonable SPLs which could be anticipated.

TABLE 7—AIRBORNE SPLS FROM SIMILAR CONSTRUCTION ACTIVITIES

Project and location	Pile size and type	Method	Measured SPLs[5]
Cape Disappointment Boat Launch Facility, Wave Barrier Project[1].	12-in steel pipe	Impact	89 A-weighted.
Bangor Test Pile Program	24-in steel pipe	Impact	110 dB Lmax at 15 m 95 dB Lmax at 122 m.
SR 520 Bridge Replacement Test Pile[2]	24-in steel pipe	Impact	95–100 dB Lmax at 11–15 m.
SR 520 Bridge Replacement Test Pile[2]	30-in steel pipe	Impact	103–106 dB Lmax at 11–15 m.
Bangor Test Pile Program[3]	36-in steel pipe	Impact	109 dB Lmax at 15 m.
Wahkiakum Ferry Terminal[4]	18-in steel pipe	Vibratory	87.5 dB Lmax at 15 m.
Bangor Test Pile Program	24-in steel pipe	Vibratory	92 dB Leq at 15 m 78 dB Leq at 122 m.
SR 520 Bridge Replacement Test Pile[2]	24-in steel pipe	Vibratory	88 dB Leq at 11 m.
Keystone Ferry Terminal, WA[4]	30-in steel pipe	Vibratory	95 dB rms at 15 m.
Vashon Ferry Terminal Test Pile Project[4] [5]	30-in steel pipe	Vibratory	83–85** dB Leq at 15 m*.
Bangor Test Pile Program[3]	36-in steel pipe	Vibratory	93 dB Leq at 15 m.

Sources: [1] WSDOT, 2006; [2] WSDOT, 2010f; [3] Navy, 2012; [4] WSDOT, 2010g; [5] WSDOT, 2010d.

* Sound pressure levels standardized to 50 ft range. Measurements made at 11 meters.

** Converted to C-weighted from A-weighted measurements to approximate unweighted sound level, reported at a distance of 26 to 36 feet.

Based on these values and the assumption of spherical spreading loss, distances to relevant thresholds and associated areas of ensonification are presented in Table 8. See Figure 6–6 of the Navy's application for a depiction of the size of areas in which each airborne sound threshold is predicted to occur at the project area due to pile driving.

TABLE 8—DISTANCES TO RELEVANT SOUND THRESHOLDS AND AREAS OF ENSONIFICATION FOR AIRBORNE SOUND, USING 36-INCH STEEL PILES

Group	Threshold	Distance to threshold (m) and associated area of ensonification (km²)	
		Vibratory	Impact
Harbor seals	90 dB	27, 0.11	192, 0.11
Other pinnipeds	100 dB	9, 0.01	61, 0.01

Marine Mammal Densities

The Navy has developed, with input from regional marine mammal experts, estimates of marine mammal densities in Washington inland waters for the Navy Marine Species Density Database (NMSDD). A technical report (Hanser *et al.,* 2015) describes methodologies and available information used to derive these densities, which are generally considered the best available information for Washington inland waters, except where specific local abundance information is available. Here, we rely on NMSDD density information for the Steller sea lions and California see lions, and use local abundance data for harbor seals. For species without a predictable occurrence, like the harbor porpoise and Northern elephant seal, estimates are based on historical likelihood of encounter. Please see Appendix A of the Navy's application for more information on the NMSDD information.

For all species, the most appropriate information available was used to estimate the number of potential incidences of take. For harbor porpoise and Northern elephant seals, this involved reviewing historical occurrence and numbers, as well as group size to develop a realistic estimate of potential exposure. For Steller sea lion and California sea lions, this involved NMSDD data. For harbor seals, this involved site-specific data from published literature describing harbor seal research conducted in Washington and Oregon, including counts from haul-outs near Port Angeles Harbor (WDFW, 2015). Therefore, density was calculated as the maximum number of individuals expected to be present at a given time (Houghton *et al.,* 2015) divided by the area of Port Angeles Harbor.

Description of Take Calculation

The take calculations presented here rely on the best data currently available for marine mammal populations in the Port Angeles Harbor. The formula was developed for calculating take due to pile driving activity and applied to each group-specific sound impact threshold. The formula is founded on the following assumptions:

- All marine mammal individuals potentially available are assumed to be present within the relevant area, and thus incidentally taken;
- An individual can only be taken once during a 24-h period;
- There were will be 75 total days of in-water activity and the largest ZOI equals 29.9 km²;
- Exposure modeling assumes that one impact pile driver and three vibratory pile drivers are operating concurrently; and,
- Exposures to sound levels above the relevant thresholds equate to take, as defined by the MMPA.

The calculation for marine mammal takes is estimated by:

Exposure estimate = (n * ZOI) * days of total activity

Where:

n = density estimate used for each species/season

ZOI = sound threshold ZOI area; the area encompassed by all locations where the SPLs equal or exceed the threshold being evaluated

n * ZOI produces an estimate of the abundance of animals that could be present in the area for exposure, and is rounded to the nearest whole number before multiplying by days of total activity.

The ZOI impact area is the estimated range of impact to the sound criteria. The relevant distances specified in Table 6 were used to calculate ZOIs around each pile. The ZOI impact area took into consideration the possible affected area of Port Angeles harbor from the pile driving site furthest from shore with attenuation due to land shadowing from bends in the shoreline. Because of the close proximity of some of the piles to the shore, the narrowness of the harbor at the project area, and the maximum fetch, the ZOIs for each threshold are not necessarily spherical and may be truncated.

While pile driving can occur any day throughout the in-water work window, and the analysis is conducted on a per day basis, only a fraction of that time (typically a matter of hours on any given day) is actually spent pile driving. Acoustic monitoring has demonstrated that Level B harassment zones for vibratory pile driving are likely to be smaller than the zones estimated through modeling based on measured source levels and practical spreading loss. Also of note is the fact that the effectiveness of mitigation measures in reducing takes is typically not quantified in the take estimation process. See Table 9 for total estimated incidents of take.

Airborne Sound

Pinnipeds that occur near the project site could be exposed to airborne sounds associated with pile driving that have the potential to cause behavioral harassment, depending on their distance from pile driving activities. Cetaceans are not expected to be exposed to airborne sounds that would result in harassment as defined under the MMPA.

Airborne noise will primarily be an issue for pinnipeds that are swimming or hauled out near the project site within the range of noise levels elevated above the acoustic criteria in Table 7. We recognize that pinnipeds in the water could be exposed to airborne sound that may result in behavioral harassment when looking with heads above water. However, these animals would previously have been 'taken' as a result of exposure to underwater sound above the behavioral harassment thresholds, which are in all cases larger than those associated with airborne sound. Thus, the behavioral harassment of these animals is already accounted for in these estimates of potential take. Multiple incidents of exposure to sound above NMFS' thresholds for behavioral harassment are not believed to result in increased behavioral disturbance, in either nature or intensity of disturbance reaction. Therefore, we do not believe that authorization of incidental take resulting from airborne sound for pinnipeds is warranted, and airborne sound is not discussed further here.

Harbor Porpoise—In Washington inland waters, harbor porpoises are most abundant in the Strait of Juan de Fuca, San Juan Island area, and Admiralty Inlet. Although harbor porpoise occur year round in the Strait of Juan de Fuca, harbor porpoises are a rare occurrence in Port Angeles Harbor, and density-based analysis does not adequately account for their unique temporal and spatial distributions. Estimates are based on historical likelihood of encounter. Based on the assumption that 3 harbor porpoise may be present intermittently in the ZOI (Hall, 2004), a total of 225 harbor porpoise exposures were estimated over 75 days of construction. These exposures would be a temporary behavioral harassment and would not impact the long-term health of individuals; the viability of the population, species, or stocks would remain stable.

California Sea Lion—The California sea lion is most common in the Strait of Juan de Fuca from fall to late spring. California sea lion haul-outs are greater than 30 miles (48 km) away. Animals could be exposed when traveling, resting, or foraging. Primarily only male California sea lions migrate through the Strait of Juan de Fuca (Jeffries *et al.*, 2000). Based on the NMSDD data showing that 0.676 California sea lions per km^2 may be present intermittently in the ZOI, 1,516 exposures were estimated for this species. These exposures would be a temporary behavioral harassment. It is assumed that this number would include multiple behavioral harassments of the same individual(s).

Steller Sea Lion—Steller sea lions occur seasonally in the Strait of Juan de Fuca from September through May. Steller sea lion haul-outs are 13 miles (21 km) away. Based on the NMSDD data showing that 0.935 Steller sea lion per km^2 may be present intermittently in the ZOI, 2,097 exposures were estimated for this species. These exposures would be a temporary behavioral harassment. It is assumed that this number would include multiple behavioral harassments of the same individual(s).

Harbor Seal—Harbor seals are present year round with haul-outs in Port Angeles Harbor. Prior Navy IHAs have successfully used density-based estimates; however, in this case, density estimates were not appropriate because there is a haul-out nearby on a log boom approximately 1.7 miles (2.7 km) west of the project site that was last surveyed in March 2013 and had a total count of 73 harbor seals (WDFW 2015). Another haul-out site is 1.3 miles (2.1 km) south of the project but is across the harbor that was last surveyed in July 2010 and had a total count of 87 harbor seals (WDFW 2015). Density was calculated as the maximum number of individuals expected to be present at a given time (160 animals), times the number of days of pile activity. Based on the assumption that there could be 160 harbors seals hauled out in proximity to the ZOI, 12,000 exposures were estimated for this stock over 75 days of construction.

We recognize that over the course of the day, while the proportion of animals in the water may not vary significantly, different individuals may enter and exit the water. Therefore, an instantaneous estimate of animals in the water at a given time may not produce an accurate assessment of the number of individuals that enter the water over the daily duration of the activity. However, no data exist regarding fine-scale harbor seal movements within the project area on time durations of less than a day, thus precluding an assessment of ingress or egress of different animals through the action area. As such, it is impossible, given available data, to determine exactly what number of individuals may potentially be exposed to underwater sound.

A typical pile driving day (in terms of the actual time spent driving) is somewhat shorter than may be assumed (*i.e.*, 8–15 hours) as a representative pile driving day based on daylight hours. Construction scheduling and notional production rates in concert with typical delays mean that hammers are active for only some fraction of time on pile driving "days."

Harbor seals are not likely to have a uniform distribution as is assumed through use of a density estimate, but are likely to be relatively concentrated near areas of interest such as the haul-outs or foraging areas. The estimated 160 harbor seals is the maximum number of animals at haul-outs outside of the airborne Level B behavioral harassment zone; the number of exposures to individual harbor seals foraging in the underwater behavioral harassment zone would likely be much lower.

This tells us that (1) there are likely to be significantly fewer harbor seals in the majority of the action area than the take estimate suggests; and (2) pile driving actually occurs over a limited timeframe on any given day (*i.e.*, less total time per day than would be assumed based on daylight hours and non-continuously), reducing the amount of time over which new individuals might enter the action area within a given day. These factors lead us to believe that the approximate number of seals that may be found in the action area (160) is more representative of the number of animals exposed than the number of takes requested for this species, and only represents 1.5 percent of the most recent estimate of this stock of harbor seals. Moreover, because the Navy is typically unable to determine from field observations whether the same or different individuals are being exposed, each observation is recorded as a new take, although an individual theoretically would only be considered as taken once in a given day.

Northern elephant seal—Northern elephant seals are rare visitors to the Strait of Juan de Fuca. However, individuals, primarily juveniles, have been known to sporadically haul out to molt on Dungeness Spit about 12 miles (19 km) from Port Angeles. One elephant seal was observed hauled-out at Dungeness Spit in each of the following years: 2000, 2002, 2004, 2005, and 2006 (WDFW 2015). Elephant seals are primarily present during spring and summer months. If a northern elephant seal was in the ZOI, it would likely be a solitary juvenile. Northern elephant seals are a rare occurrence in Port Angeles Harbor, and density-based analysis does not adequately account for their unique temporal and spatial distributions; therefore, estimates are based on historical likelihood of encounter. Based on the assumption that one elephant seal may be present intermittently in the ZOI, 75 exposures were calculated for this species. These exposures would be a temporary behavioral harassment.

TABLE 9—NUMBER OF POTENTIAL INCIDENTAL INSTANCES OF TAKE OF MARINE MAMMALS WITHIN VARIOUS ACOUSTIC THRESHOLD ZONES

Species	Density	Underwater		% of stock
		Level A	Level B (120 dB)[1]	
California sea lion	0.676 animal/sq. km*	0	1,516	0.5
Steller sea lion	0.935 animals/sq. km*	0	2,097	4
Harbor seal	160[2]	0	[4]12,000/160	100/1.5
Northern elephant seal	1[3]	0	75	0.04
Harbor porpoise	3[3]	0	225	2

[1] The 160-dB acoustic harassment zone associated with impact pile driving would always be subsumed by the 120-dB harassment zone produced by vibratory driving. Therefore, takes are not calculated separately for the two zones.

* For species with associated density, density was multiplied by largest ZOI (*i.e.,* 29.9 km^2). The resulting value was rounded to the nearest whole number and multiplied by the 75 days of activity. For species with abundance only, that value was multiplied directly by the 75 days of activity. We assume for reasons described earlier that no takes would result from airborne noise.

[2] For this species, site-specific data was used from published literature describing research conducted in Washington and Oregon, including counts from haul-outs near Port Angeles Harbor. Therefore, density was calculated as the maximum number of individuals expected to be present at a given time.

[3] Figures presented are abundance numbers, not density, and are calculated as the average of average daily maximum numbers per month (see Section 6.6 in application). Abundance numbers are rounded to the nearest whole number for take estimation.

[4] The maximum number of harbor seal anticipated to be in the vicinity to be exposed to the sound levels is 160 animals based on counts from the two nearby haul out sites. This small number of individuals is expected to be the same animals exposed repeatedly, instead of new individuals being exposed each day. These animals, to which any incidental take would accrue, represent 1.5 percent of the most recent estimate of the stock abundance from the 2013 SAR.

Analyses and Preliminary Determinations

Negligible Impact Analysis

NMFS has defined "negligible impact" in 50 CFR 216.103 as ". . . an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival." A negligible impact finding is based on the lack of likely adverse effects on annual rates of recruitment or survival (*i.e.,* population-level effects). An estimate of the number of Level B harassment takes alone is not enough information on which to base an impact determination. In addition to considering estimates of the number of marine mammals that might be "taken" through behavioral harassment, we consider other factors, such as the likely nature of any responses (*e.g.,* intensity, duration), the context of any responses (*e.g.,* critical reproductive time or location, migration), as well as the number and nature of estimated Level A harassment takes, the number of estimated mortalities, and effects on habitat. To avoid repetition, the discussion of our analyses applies to all the species listed in Table 9, given that the anticipated effects of this activity on these different marine mammal stocks are expected to be similar. There is no information about the nature or severity of the impacts, or the size, status, or structure of any of these species or stocks that would lead to a different analysis for this activity.

Pile driving activities associated with the pier construction project, as outlined previously, have the potential to disturb or displace marine mammals. Specifically, the specified activities may result in take, in the form of Level B harassment (behavioral disturbance) only, from underwater sounds generated from pile driving. Potential takes could occur if individuals of these species are present in the ensonified zone when pile driving is happening, which is likely to occur because (1) harbor seals are frequently observed in Port Angeles harbor in two known haul-out locations; or (2) cetaceans or pinnipeds transit the outer edges of the larger Level B harassment zone outside of the harbor.

No injury, serious injury, or mortality is anticipated given the methods of installation and measures designed to minimize the possibility of injury to marine mammals. The potential for these outcomes is minimized through the construction method and the implementation of the planned mitigation measures. Specifically, vibratory hammers will be the primary method of installation, and this activity does not have significant potential to cause injury to marine mammals due to the relatively low source levels produced (likely less than 180 dB rms) and the lack of potentially injurious source characteristics. Impact pile driving produces short, sharp pulses with higher peak levels and much sharper rise time to reach those peaks. When impact driving is necessary, required measures (use of a sound attenuation system, which reduces overall source levels as well as dampening the sharp, potentially injurious peaks, and implementation of shutdown zones) significantly reduce any possibility of injury. Given sufficient "notice" through use of soft start, marine mammals are expected to move away from a sound source that is annoying prior to it becoming potentially injurious. The likelihood that marine mammal detection ability by trained observers is high under the environmental conditions described for Port Angeles harbor further enables the implementation of shutdowns to avoid injury, serious injury, or mortality.

Effects on individuals that are taken by Level B harassment, on the basis of reports in the literature, will likely be limited to reactions such as increased swimming speeds, increased surfacing time, or decreased foraging (if such activity were occurring). Most likely, individuals will simply move away from the sound source and be temporarily displaced from the areas of pile driving, although even this reaction has been observed primarily only in association with impact pile driving. Repeated exposures of individuals to levels of sound that may cause Level B harassment are unlikely to result in hearing impairment or to significantly disrupt foraging behavior. Thus, even repeated Level B harassment of some small subset of the overall stock is unlikely to result in any significant realized decrease in fitness to those individuals, and thus would not result in any adverse impact to the stock as a whole. Level B harassment will be reduced to the level of least practicable impact through use of mitigation measures described herein and, if sound produced by project activities is sufficiently disturbing, animals are likely to simply avoid the project area while the activity is occurring.

For pinnipeds, no rookeries are present in the project area, but there are two haul-outs within 2.5 mi (4 km) of the project site. However, the project area is not known to provide foraging habitat of any special importance (other than is afforded by the known migration of salmonids). No cetaceans are expected within the harbor.

In summary, this negligible impact analysis is founded on the following factors: (1) The possibility of injury, serious injury, or mortality may reasonably be considered discountable; (2) the anticipated incidences of Level B harassment consist of, at worst, temporary modifications in behavior; (3) the absence of any major rookeries and only a few haul-out areas near or adjacent to the project site; (4) the absence of cetaceans within the harbor and generally sporadic occurrence outside of the ensonified area; (5) the absence of any other known areas or features of special significance for foraging or reproduction within the project area; and (6) the presumed efficacy of the planned mitigation measures in reducing the effects of the specified activity to the level of least practicable impact. In addition, none of these stocks are listed under the ESA or designated as depleted under the MMPA. In combination, we believe that these factors, as well as the available body of evidence from other similar activities, including those conducted in nearby locations, demonstrate that the potential effects of the specified activity will have only short-term effects on individuals. The specified activity is not expected to impact rates of recruitment or survival and will therefore not result in population-level impacts. Based on the analysis contained herein of the likely effects of the specified activity on marine mammals and their habitat, and taking into consideration the implementation of the proposed monitoring and mitigation measures, we preliminarily find that the total marine mammal take from Navy's pier construction activities will have a negligible impact on the affected marine mammal species or stocks.

Small Numbers Analysis

The numbers of animals authorized to be taken for harbor porpoise, Northern elephant seal, and Steller and California sea lions would be considered small relative to the relevant stocks or populations (less than one percent for Northern elephant seal and California sea lion, less than four percent for Steller sea lion, and less than two percent for harbor porpoise) even if each estimated taking occurred to a new individual—an extremely unlikely scenario. For pinnipeds occurring in the nearshore areas, there will almost certainly be some overlap in individuals present day-to-day. Further, for the pinniped species, these takes could potentially occur only within some small portion of the overall regional stock. For example, of the estimated 296,750 California sea lions, only certain adult and subadult males—believed to number approximately 3,000–5,000 by Jeffries *et al.* (2000)—travel north during the non-breeding season. That number has almost certainly increased with the population of California sea lions—the 2000 SAR for California sea lions reported an estimated population size of 204,000–214,000 animals—but likely remains a relatively small portion of the overall population.

For harbor seals, takes are likely to occur only within some portion of the population, rather than to animals from the Washington inland waters stock as a whole. It is estimated that, based on counts from the two nearby haul out sites, 160 harbor seals could potentially be in the vicinity to be exposed to the sound levels. This small number of individuals is expected to be the same animals exposed repeatedly, instead of new individuals being exposed each day. These animals, to which any incidental take would accrue, represent 1.5 percent of the most recent estimate of the stock abundance from the 2013 SAR.

As summarized here, the estimated numbers of potential incidents of harassment for these species are likely much higher than will realistically occur. This is because (1) we use the maximum possible number of days (75) in estimating take, despite the fact that multiple delays and work stoppages are likely to result in a lower number of actual pile driving days; and (2) sea lion estimates rely on the averaged maximum daily abundances per month, rather than simply an overall average which would provide a much lower abundance figure. In addition, potential efficacy of mitigation measures in terms of reduction in numbers and/or intensity of incidents of take has not been quantified. Therefore, these estimated take numbers are likely to be overestimates of individuals. Based on the analysis contained herein of the likely effects of the specified activity on marine mammals and their habitat, and taking into consideration the implementation of the mitigation and monitoring measures, we preliminarily find that small numbers of marine mammals will be taken relative to the populations of the affected species or stocks.

Impact on Availability of Affected Species for Taking for Subsistence Uses

There are no relevant subsistence uses of marine mammals implicated by this action. Therefore, we have determined that the total taking of affected species or stocks would not have an unmitigable adverse impact on the availability of such species or stocks for taking for subsistence purposes.

Endangered Species Act (ESA)

No marine mammal species listed under the ESA are expected to be affected by these activities. Therefore, we have determined that a section 7 consultation under the ESA is not required.

National Environmental Policy Act (NEPA)

In compliance with the NEPA of 1969 (42 U.S.C. 4321 *et seq.*), as implemented by the regulations published by the Council on Environmental Quality (CEQ; 40 CFR parts 1500–1508), the Navy prepared an Environmental Assessment (EA) for this project. In compliance with NEPA, the CEQ regulations, and NOAA Administrative Order 216–6, we will independently evaluate the Navy's EA and determine whether or not to adopt it. We may prepare a separate NEPA analysis and incorporate relevant portions of Navy's EA by reference. We will review all comments submitted in response to this notice as we complete the NEPA process, including a decision of whether to sign a Finding of No Significant Impact (FONSI), prior to a final decision on the incidental take authorization request. The 2015 NEPA documents are available for review at *http://www.nmfs.noaa.gov/pr/permits/incidental.htm.*

Proposed Authorization

As a result of these preliminary determinations, we propose to issue an IHA to the Navy for conducting the described pier and support facilities for the transit protection system U.S. Coast Guard Air Station/Sector Field Office Port Angeles, Washington from November 1, 2016 through February 15, 2017, and July 16 through October 31, 2017 provided the previously mentioned mitigation, monitoring, and reporting requirements are incorporated. The proposed IHA language is provided next.

This section contains a draft of the IHA itself. The wording contained in this section is proposed for inclusion in the IHA (if issued).

1. This Incidental Harassment Authorization (IHA) is valid for one year from the date of issuance.

2. This IHA is valid only for pile driving and removal activities associated with construction of pier and support facilities for the transit protection system U.S. Coast Guard Air Station/Sector Field Office Port Angeles, Washington.

3. General Conditions

(a) A copy of this IHA must be in the possession of the Navy, its designees, and work crew personnel operating under the authority of this IHA.

(b) The species authorized for taking are the harbor seal (*Phoca vitulina*), Northern elephant seal (*Mirounga angustirostris*), California sea lion (*Zalophus californianus*), Steller sea lion (*Eumetopias jubatus*), and harbor porpoise (*Phocoena phocoena*).

(c) The taking, by Level B harassment only, is limited to the species listed in condition 3(b). See Table 1 below for numbers of take authorized.

TABLE 1—AUTHORIZED TAKE NUMBERS

Species	Authorized take	
	Level A	Level B
Harbor seal	0	12,000
Northern elephant seal	0	75
California sea lion	0	1,516
Steller sea lion	0	2,097
Harbor porpoise	0	225
Total	0	15,913

(d) The taking by injury (Level A harassment), serious injury, or death of any of the species listed in condition 3(b) of the Authorization or any taking of any other species of marine mammal is prohibited and may result in the modification, suspension, or revocation of this IHA.

(e) The Navy shall conduct briefings between construction supervisors and crews, marine mammal monitoring team, and Navy staff prior to the start of all pile driving activity, and when new personnel join the work, in order to explain responsibilities, communication procedures, marine mammal monitoring protocol, and operational procedures.

(f) Prior to the start of pile driving or removal, the Navy will contact the Orca Network and/or Center for Whale Research to determine the location of the nearest marine mammal sightings. Daily sighting information reported on the Orca Network Twitter site (*https://twitter.com/orcanetwork*) will be checked several times a day. In addition, the SeaSound Remote Sensing Network will be monitored for real-time information on the presence or absence of whales before starting any pile driving or removal.

4. Mitigation Measures

In order to ensure the least practicable impact on the species listed in condition 3(b), the holder of this Authorization is required to implement the following mitigation measures:

(a) During impact pile driving, the Navy shall implement a minimum shutdown zone of 10 m radius around the pile, to be effective for all species of pinniped, and a minimum shutdown zone of 30 m radius around the pile, to be effective for all species of cetacean. If a marine mammal comes within the relevant zone, operations shall cease.

(b) During vibratory pile driving and removal, the Navy shall implement a minimum shutdown zone of 10 m radius around the pile for marine mammals. If a marine mammal comes within this zone, such operations shall cease.

(c) The Navy shall similarly avoid direct interaction with marine mammals during in-water heavy machinery work other than pile driving that may occur in association with the wharf construction project. If a marine mammal comes within 10 m of such activity, operations shall cease and vessels shall reduce speed to the minimum level required to maintain steerage and safe working conditions, as appropriate.

(d) The Navy shall establish monitoring locations as described in the Marine Mammal Monitoring Plan. For all pile driving activities, a minimum of three PSOs will be present during all impact and vibratory pile driving/removal. PSOs would be positioned at the best practicable vantage points, taking into consideration security, safety, and space limitations at USCG AIRSTA/SFO Port Angeles. A minimum of three PSOs would be present during both impact and vibratory pile driving/removal. Both the injury and behavioral harassment zones would be monitored in order to remain in compliance with the MMPA. These observers shall record all observations of marine mammals, regardless of distance from the pile being driven, as well as behavior and potential behavioral reactions of the animals.

(e) Monitoring shall take place from 15 minutes prior to initiation of pile driving activity through 30 minutes post-completion of pile driving activity. Pre-activity monitoring shall be conducted for 15 minutes to ensure that the shutdown zone is clear of marine mammals, and pile driving may commence when observers have declared the shutdown zone clear of marine mammals. In the event of a delay or shutdown of activity resulting from marine mammals in the shutdown zone, animals shall be allowed to remain in the shutdown zone (*i.e.*, must leave of their own volition) and their behavior shall be monitored and documented. Monitoring shall occur throughout the time required to drive a pile. The shutdown zone must be determined to be clear during periods of good visibility.

(f) If a marine mammal approaches or enters the shutdown zone, all pile driving activities at that location shall be halted. If pile driving is halted or delayed at a specific location due to the presence of a marine mammal, the activity may not commence or resume until either the animal has voluntarily left and been visually confirmed beyond the shutdown zone or 15 minutes have passed without re-detection of the animal.

(g) Monitoring shall be conducted by qualified observers, as described in the Monitoring Plan. Trained observers shall be placed from the best vantage point(s) practicable to monitor for marine mammals and implement shutdown or delay procedures when applicable through communication with the equipment operator.

(h) Approved sound attenuation devices shall be used during impact pile driving operations. The Navy shall implement the necessary contractual requirements to ensure that such devices are capable of achieving optimal performance, and that deployment of the device is implemented properly such that no reduction in performance may be attributable to faulty deployment.

(i) The Navy shall use soft start techniques recommended by NMFS for pile driving.

i. For impact pile driving, the soft start requires contractors to provide an initial set of strikes from the impact hammer at reduced energy, followed by a 30-second waiting period, then two subsequent reduced energy strike sets. Soft start shall be implemented at the start of each day's impact pile driving and at any time following cessation of impact pile driving for a period of 30 minutes or longer.

ii. For vibratory pile driving, if a variable moment driver can be used, the contractor will initiate noise from vibratory drivers for 15 seconds at reduced energy, followed by a 30-second waiting period. The procedure shall be repeated two additional times. However, if a variable moment hammer proves infeasible for use with this project, or if unsafe working conditions during soft starts are reported by the contractor, the Navy may discontinue use of the vibratory soft start measure. The Navy will inform NMFS Office of Protected Resources if the soft-start procedure is discontinued.

(j) Pile driving shall only be conducted during daylight hours.

5. Monitoring

The holder of this Authorization is required to conduct marine mammal monitoring during pile driving activity. Marine mammal monitoring and reporting shall be conducted in accordance with the Monitoring Plan.

(a) The Navy shall collect sighting data and behavioral responses to pile driving for marine mammal species observed in the region of activity during the period of activity. All observers shall be trained in marine mammal identification and behaviors, and shall have no other construction related tasks while conducting monitoring.

(b) For all marine mammal monitoring, the information shall be recorded as described in the Monitoring Plan.

6. Reporting

The holder of this Authorization is required to:

(a) Submit a draft report on all marine mammal monitoring conducted under the IHA within 90 calendar days of the end of the in-water work period. A final report shall be prepared and submitted within 30 days following resolution of comments on the draft report from NMFS. This report must contain the informational elements described in the Monitoring Plan, at minimum (see *www.nmfs.noaa.gov/pr/permits/incidental/construction.htm*).

(b) Reporting injured or dead marine mammals:

i. In the unanticipated event that the specified activity clearly causes the take of a marine mammal in a manner prohibited by this IHA, such as an injury (Level A harassment), serious injury, or mortality, Navy shall immediately cease the specified activities and report the incident to the Office of Protected Resources, NMFS, and the West Coast Regional Stranding Coordinator, NMFS. The report must include the following information:

A. Time and date of the incident;

B. Description of the incident;

C. Environmental conditions (*e.g.*, wind speed and direction, Beaufort sea state, cloud cover, and visibility);

D. Description of all marine mammal observations in the 24 hours preceding the incident;

E. Species identification or description of the animal(s) involved;

F. Fate of the animal(s); and

G. Photographs or video footage of the animal(s).

Activities shall not resume until NMFS is able to review the circumstances of the prohibited take. NMFS will work with Navy to determine what measures are necessary to minimize the likelihood of further prohibited take and ensure MMPA compliance. Navy may not resume their activities until notified by NMFS.

i. In the event that Navy discovers an injured or dead marine mammal, and the lead observer determines that the cause of the injury or death is unknown and the death is relatively recent (*e.g.*, in less than a moderate state of decomposition), Navy shall immediately report the incident to the Office of Protected Resources, NMFS, and the West Coast Regional Stranding Coordinator, NMFS.

The report must include the same information identified in 6(b)(i) of this IHA. Activities may continue while NMFS reviews the circumstances of the incident. NMFS will work with Navy to determine whether additional mitigation measures or modifications to the activities are appropriate.

ii. In the event that Navy discovers an injured or dead marine mammal, and the lead observer determines that the injury or death is not associated with or related to the activities authorized in the IHA (*e.g.*, previously wounded animal, carcass with moderate to advanced decomposition, scavenger damage), Navy shall report the incident to the Office of Protected Resources, NMFS, and the West Coast Regional Stranding Coordinator, NMFS, within 24 hours of the discovery. Navy shall provide photographs or video footage or other documentation of the stranded animal sighting to NMFS.

7. This Authorization may be modified, suspended or withdrawn if the holder fails to abide by the conditions prescribed herein, or if the authorized taking is having more than a negligible impact on the species or stock of affected marine mammals.

Request for Public Comments

We request comment on our analysis, the draft authorization, and any other aspect of this Notice of Proposed IHA for Navy's wharf construction activities. Please include with your comments any supporting data or literature citations to help inform our final decision on Navy's request for an MMPA authorization.

Dated: March 28, 2016.

Wanda Cain,

Acting Deputy Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2016–07308 Filed 4–1–16; 8:45 am]

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2 CFR Part 3474
34 CFR Parts 75 and 76

Department of Homeland Security

6 CFR Part 19

Department of Agriculture

7 CFR Part 16

Agency for International Development

22 CFR Part 205

Department of Housing and Urban Development

24 CFR Parts 5, 92, 570, *et al.*

Department of Justice

28 CFR Part 38

Department of Labor

29 CFR Part 2

Department of Veterans Affairs

38 CFR Parts 50, 61, and 62

Department of Health and Human Services

45 CFR Parts 87 and 1050

Federal Agency Final Regulations Implementing Executive Order 13559: Fundamental Principles and Policymaking Criteria for Partnerships With Faith-Based and Other Neighborhood Organizations; Final Rule

DEPARTMENT OF EDUCATION

2 CFR Part 3474

34 CFR Parts 75 and 76

[ED–2014–OS–0131]

RIN 1895–AA01

DEPARTMENT OF HOMELAND SECURITY

6 CFR Part 19

[Docket No. DHS–2006–0065]

RIN 1601–AA40

DEPARTMENT OF AGRICULTURE

7 CFR Part 16

RIN 0503–AA55

AGENCY FOR INTERNATIONAL DEVELOPMENT

22 CFR Part 205

RIN 0412–AA75

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Parts 5, 92, 570, 574, 576, 578, and 1003

[Docket No. FR–5781–F–02]

RIN 2501–AD65

DEPARTMENT OF JUSTICE

28 CFR Part 38

[Docket No. OAG 149; AG Order No. 3649–2016]

RIN 1105–AB45

DEPARTMENT OF LABOR

29 CFR Part 2

RIN 1290–AA29

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Parts 50, 61, and 62

RIN 2900–AP05

DEPARTMENT OF HEALTH AND HUMAN SERVICES

45 CFR Parts 87 and 1050

RIN 0991–AB96

Federal Agency Final Regulations Implementing Executive Order 13559: Fundamental Principles and Policymaking Criteria for Partnerships With Faith-Based and Other Neighborhood Organizations

AGENCY: Department of Education, Department of Homeland Security, Department of Agriculture, Agency for International Development, Department of Housing and Urban Development, Department of Justice, Department of Labor, Department of Veterans Affairs, Department of Health and Human Services.

ACTION: Final rule.

SUMMARY: The Agencies publishing this final rule amend or establish their regulations to implement Executive Order 13279, as amended by Executive Order 13559. Executive Order 13279 established fundamental principles to guide the policies of Federal agencies regarding the participation of faith-based and other community organizations in programs that the Federal agencies administer. Executive Order 13559 amended Executive Order 13279 to clarify those principles and add certain protections for beneficiaries of Federal social service programs.

DATES: *Effective Date:* These regulations are effective on May 4, 2016.

Compliance Date: Recipients of Federal financial assistance to which these regulations apply must comply with these final regulations by July 5, 2016.

FOR FURTHER INFORMATION CONTACT: For general information, please contact Melissa Rogers, White House Office of Faith-Based and Neighborhood Partnerships, 202–456–3394 or via email at *whpartnerships@who.eop.gov.*

For information regarding each agency's implementation of these final regulations, the contact information for that agency follows.

- DEPARTMENT OF EDUCATION: Rev. Brenda Girton-Mitchell, Director, Center for Faith-Based and Neighborhood Partnerships, Office of the Secretary, U.S. Department of Education, 400 Maryland Avenue SW., Room 1E110–A, Washington, DC 20202–6132, Telephone: 202–401–1876. If you use a telecommunications device for the deaf (TDD) or a text telephone (TTY), call the Federal Relay Service (FRS), toll-free, at 1–800–877–8339.
- DEPARTMENT OF HOMELAND SECURITY: Scott Shuchart, Office for Civil Rights and Civil Liberties, Department of Homeland Security, 202–401–1474 (telephone), 202–357–1196 (facsimile), *scott.shuchart@hq.dhs.gov* (email). If you use a telecommunications device for the deaf (TDD) or a text telephone (TTY), call the Federal Relay Service (FRS), toll-free, at 1–800–877–8339.
- DEPARTMENT OF AGRICULTURE: Norah Deluhery, Director, Center for Faith-Based and Neighborhood Partnerships, U.S. Department of Agriculture, 1400 Independence Avenue SW., Washington, DC 20250; telephone number 202–720–2032 (this is not a toll-free number). Persons with disabilities or who require alternative means of communication (Braille, large print, audio tape, etc.) should contact the USDA Target Center at 202–720–2600 (voice and TDD).
- AGENCY FOR INTERNATIONAL DEVELOPMENT: J. Mark Brinkmoeller, Director, Center for Faith-Based and Community Initiatives, USAID, Room 6.07–023, 1300 Pennsylvania Avenue NW., Washington, DC 20523; telephone: 202–712–4080 (this is not a toll-free number). If you use a telecommunications device for the deaf (TDD) or a text telephone (TTY), call the Federal Relay Service (FRS), toll-free, at 1–800–877–8339.
- DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT: Paula Lincoln, Director, Center for Faith-Based and Neighborhood Partnerships, Department of Housing and Urban Development, 451 7th Street SW., Room 10184, Washington, DC 20410–7000; telephone number 202–708–2404 (this is not a toll-free number). If you use a telecommunications device for the deaf (TDD) or a text telephone (TTY), call the Federal Relay Service (FRS), toll-free, at 1–800–877–8339.
- DEPARTMENT OF HEALTH AND HUMAN SERVICES: Acacia Bamberg Salatti, Director, U.S. Department of Health and Human Services Center for Faith-Based and Neighborhood Partnerships, 200 Independence Avenue SW., Room 747D, Washington, DC 20201 or via email at *partnerships@hhs.gov,* telephone: 202–358–3595, fax: 202–205–2727. If you use a telecommunications device for the deaf (TDD) or a text telephone (TTY), call the Federal Relay Service (FRS), toll-free, at 1–800–877–8339.
- DEPARTMENT OF JUSTICE: Theron Pride, Chief of Staff/Senior Counsel, Office of the Assistant Attorney General, Office of Justice Programs, U.S. Department of Justice, Washington, DC 20531; telephone: 202–307–5933. If you use a telecommunications device for the deaf (TDD) or a text telephone (TTY), call the Federal Relay Service (FRS), toll-free, at 1–800–877–8339.
- DEPARTMENT OF LABOR: Naomi Barry-Pérez, Director, Civil Rights Center, U.S. Department of Labor, Frances Perkins Building, 200 Constitution Ave. NW., Room N–4123, Washington, DC 20210; telephone: 202–693–6500. Please note this is not a toll-free number. If you use a telecommunications device for the deaf (TDD) or a text telephone (TTY), call the Federal Relay Service (FRS), toll-free, at 1–800–877–8339.

- DEPARTMENT OF VETERANS AFFAIRS: Stephen B. Dillard, Deputy Director, Faith-based and Neighborhood Partnership (00FB), Office of the Secretary, Department of Veterans Affairs, 810 Vermont Ave. NW., Washington, DC 20420, 202–461–7689. (This is not a toll-free telephone number.) If you use a telecommunications device for the deaf (TDD) or a text telephone (TTY), call the Federal Relay Service (FRS), toll-free, at 1–800–877–8339.

SUPPLEMENTARY INFORMATION: On Thursday, August 6, 2015, the nine agencies participating in this joint final rulemaking each published a separate notice of proposed rulemaking (NPRM) in volume 80 of the **Federal Register**, as follows:

1. Agency for International Development (USAID), 80 FR 47237;
2. Department of Agriculture (USDA), 80 FR 47243;
3. Department of Education (ED), 80 FR 47253;
4. Department of Health and Human Services (HHS), 80 FR 47271;
5. Department of Homeland Security (DHS), 80 FR 47283;
6. Department of Housing and Urban Development (HUD), 80 FR 47301;
7. Department of Justice (DOJ), 80 FR 47315;
8. Department of Labor (DOL), 80 FR 47327;
9. Department of Veterans Affairs (VA), 80 FR 47339.

This preamble refers to these agencies as "the Agencies." This final rulemaking notice publishes the final regulations of all the Agencies in a single document. The Agencies decided to publish a joint final rule because most of the comments received by the Agencies addressed issues that were relevant to all of the Agencies' proposed rules. This final rule addresses cross-cutting issues first, followed by separate agency-specific discussions of issues particular to each Agency. Following the preamble, each Agency makes final amendments to its regulations or establishes new final regulations, in CFR title and part order, to implement the requirements in Executive Order 13279, as amended by Executive Order 13559.[1] The final rule is broken up into six major parts, organized as follows:

I. Background
II. These Final Regulations
III. Cross-Cutting Public Comments
  A. Prohibited Use of Direct Federal Financial Assistance
  1. "Explicitly Religious" Activities
  2. Chaplaincy
  3. Nondiscrimination and Programs Funded in Part by Federal Financial Assistance
  B. Direct and Indirect Federal Financial Assistance
  C. Intermediaries
  1. Compliance
  2. Comprehension of Requirements
  D. Protections for Beneficiaries
  1. Beneficiary Notice
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  E. Political or Religious Affiliation
  1. Merit-Based Decisions
  2. Access to Federal Funding
  3. Political Influence
  F. Monitoring
  G. Other Issues
  1. Nondiscrimination in Employment Decisions/Religious Freedom Restoration Act
  2. Reinforcement of Other Nondiscrimination Protections
  3. Applicability to Sub-Awards, Including Contracts
  4. Definitions for "Social Service Program" and "Federal Financial Assistance"
  5. Display of Religious Symbols
  6. Eligibility of Faith-Based Organizations to Receive Federal Funding
  7. Training Requirements
IV. Agency-Specific Issues and Certifications
  A. Department of Education
  B. Department of Homeland Security
  C. Department of Agriculture
  D. Agency for International Development
  E. Department of Housing and Urban Development
  F. Department of Justice
  G. Department of Labor
  H. Department of Veterans Affairs
  I. Department of Health and Human Services
V. General Certifications
VI. Final Regulations

I. Background

On December 12, 2002, President George W. Bush signed Executive Order 13279, Equal Protection of the Laws for Faith-Based and Community Organizations (67 FR 77141), available at *https://www.gpo.gov/fdsys/pkg/FR-2002-12-16/pdf/02-31831.pdf*. Executive Order 13279 set forth principles and policymaking criteria to guide Federal agencies in formulating and developing policies with implications for faith-based and other community organizations, to ensure equal protection of the laws for these organizations, and to expand opportunities for, and strengthen the capacity of, these organizations to meet the need for social services in America's communities. In addition, Executive Order 13279 directed specified agency heads to review and evaluate existing policies relating to Federal financial assistance for social service programs and, where appropriate, to implement new policies that were consistent with, and necessary to further, the fundamental principles and policymaking criteria established under Executive Order 13279.

To comply with this Executive order, most of the Agencies participating in this joint final rule amended their regulations to clarify that faith-based or religious organizations (faith-based organizations) are eligible to participate in programs administered by each Agency on the same basis as any other private organization. Some of the participating Agencies also had regulations predating the regulations implementing Executive Order 13279 that generally prohibited organizations from using Federal funds to support religious activities. See, *e.g.*, 34 CFR 75.532, 76.532 (ED).

Shortly after taking office, on February 5, 2009, President Barack Obama signed Executive Order 13498, Amendments to Executive Order 13199 and Establishment of the President's Advisory Council for Faith-Based and Neighborhood Partnerships (74 FR 6533), available at https://www.gpo.gov/fdsys/pkg/FR–2009–02–09/pdf/E9–2893.pdf. Executive Order 13498 changed the name of the White House Office of Faith-Based and Community Initiatives to the White House Office of Faith-Based and Neighborhood Partnerships and established the President's Advisory Council on Faith-Based and Neighborhood Partnerships (Advisory Council). The President created the Advisory Council to bring together experts to, among other things, make recommendations to the President for changes in policies, programs, and practices that affect the delivery of services by faith-based and other neighborhood organizations.

The Advisory Council issued its recommendations in a report to the President in March 2010 entitled *President's Advisory Council on Faith-Based and Neighborhood Partnerships, A New Era of Partnerships: Report of Recommendations to the President* (Mar. 2010), available at *http://www.whitehouse.gov/sites/default/files/microsites/ofbnp-council-final-report.pdf* ("Advisory Council Report"). The Advisory Council Report included recommendations to amend Executive Order 13279 in order to clarify the legal foundation of partnerships between the Federal Government and faith-based and other neighborhood organizations and offered a new set of fundamental principles to guide agency decisionmaking in administering Federal financial assistance and support to faith-based and other neighborhood organizations.

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[1] USAID does not fund programs involving indirect Federal financial assistance, as that term is used within these final regulations, and is not establishing new requirements for written notices to be provided to beneficiaries or for referrals to alternative providers. Thus, USAID does not join in parts III.B and III.D of this preamble.

President Obama signed Executive Order 13559, Fundamental Principles and Policymaking Criteria for Partnerships With Faith-Based and Other Neighborhood Organizations, on November 17, 2010, 75 FR 71319, available at *http://www.gpo.gov/fdsys/pkg/FR-2010-11-22/pdf/2010-29579.pdf.* Executive Order 13559 incorporated some of the Advisory Council's recommendations by amending Executive Order 13279 to:

- Require agencies that administer or award Federal financial assistance for social service programs to implement protections for the beneficiaries or prospective beneficiaries of those programs. These protections include: (1) Ensuring that written notice of the Executive order's provisions[2] is provided to beneficiaries before they enroll in, or receive services under, a program, and (2) requiring that organizations providing services under a program provide referrals to alternative providers if the beneficiary objects to the religious character of the organization providing services;
- Affirm that decisions about awards of Federal financial assistance must be free from political interference or even the appearance of such interference, and must be made on the basis of merit, not on the basis of the religious affiliation, or lack thereof, of the recipient organization;
- Affirm that the Federal Government has an obligation to monitor and enforce standards regarding the relationship between religion and government in ways that avoid excessive entanglement between religious bodies and governmental entities;
- Clarify (1) the principle that organizations engaging in explicitly religious activities must separate these activities in time or location from programs supported with direct Federal financial assistance (Executive Order 13279 stated this requirement as applying to "inherently religious" activities); (2) that such activities cannot be subsidized with direct Federal financial assistance; and (3) that participation in those activities must be voluntary for the beneficiaries of the social service program supported with direct Federal financial assistance;
- Emphasize that faith-based providers are eligible to compete for assistance under Federal Government social service programs and to participate in those programs while maintaining their religious identity as described in the Executive order;
- Require agencies that provide Federal financial assistance for social service programs to post online the regulations, guidance documents, and policies that have implications for faith-based and other neighborhood organizations, as well as a list of entities receiving that assistance; and
- Clarify that the Executive order principles apply to sub-awards as well as to prime awards.

In addition, Executive Order 13559 created the Interagency Working Group on Faith-Based and Other Neighborhood Partnerships (Working Group) to review and evaluate existing agency regulations, guidance documents, and policies for consistency with the Executive order, and to submit a report to the President recommending the amendments, changes, or additions necessary to ensure that regulations and guidance documents associated with the distribution of Federal financial assistance for social service programs are consistent with the fundamental principles set forth in the Executive order. The Executive order mandated that this report include a model set of regulations and guidance documents for the Agencies to adopt in a number of areas, including, among other things, prohibited uses of direct Federal financial assistance and separation requirements, protections for religious identity, the distinction between "direct" and "indirect" Federal financial assistance, and protections for beneficiaries of social service programs.

The Executive order required that, following receipt of the Working Group's report, the Office of Management and Budget (OMB), in coordination with the U.S. Department of Justice, issue guidance to agencies on the implementation of the Executive order. In August 2013, OMB issued that guidance consistent with the model regulations and guidance issued by the Working Group. Memorandum for the Heads of Executive Departments and Agencies, from Sylvia M. Burwell, Director, Office of Management and Budget, *Re: Implementation of Executive Order 13559, "Fundamental Principles and Policymaking Criteria for Partnerships With Faith-Based and Other Neighborhood Organizations"* (Aug. 2, 2013), available at *https://www.whitehouse.gov/sites/default/files/omb/memoranda/2013/m-13-19.pdf.* The OMB guidance also stated that participating agency heads must amend regulations and guidance to ensure that such regulations and guidance are consistent with the fundamental principles stated in the Executive order. Id. at 2. As noted above, on August 6, 2015, the Agencies published proposed regulations consistent with this OMB guidance. Following receipt and consideration of public comments, the Agencies now issue these final regulations. Consistent with the principle of uniformity expressed in section 3 of the Executive order, the Agencies agreed that these final regulations need to provide uniform direction on matters regarding the fundamental principles set forth in section 2 of the Executive order to the extent practicable.

In addition to these final regulations, each Agency will provide policy guidance or reference materials to assist recipients[3] of Federal financial assistance in complying with these final regulations. While these regulations become effective 30 days after publication in the **Federal Register**, the Agencies have decided to delay the date by which recipients of Federal financial assistance must comply with these final regulations until July 5, 2016 to ensure that recipients of Federal financial assistance fully understand their obligations under these final regulations.[4] Unless otherwise provided, recipients subject to these final regulations include recipients of an award of Federal financial assistance made on or after May 4, 2016. However, applicability of these final regulations to existing awards of Federal financial assistance shall be in accordance with the terms and conditions of the award.

II. These Final Regulations

These final regulations are effective on May 4, 2016. Recipients must comply with these final regulations by July 5, 2016. Note: If a recipient receives a new or continuation (renewal) award before the effective date, in most cases that award will not be subject to these final regulations and, therefore, the recipient will not have to comply with the regulations on or after the compliance date. However, some awards made before the effective date of these regulations may contain conditions that would make these regulations apply. Recipients that have awards subject to these conditions would have to comply with the final regulations on the compliance date despite the fact that their awards were made before the effective date.

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[2] When this final rulemaking notice refers to "the Executive order" without distinction, it means Executive Order 13279, as amended by Executive Order 13559.

[3] For the purposes of this preamble, the terms "recipient" and "grantee" and the terms "subrecipient" and "subgrantee" are synonymous. Depending on context, "recipients" may also include subrecipients.

[4] Some of the Agencies have existing regulations that are not affected by the delayed compliance date.

Unless otherwise specified in an agency-specific part of this preamble,[5] these final regulations amend existing regulations or establish new regulations to do the following:

- Require the Agencies to ensure that all decisions about Federal financial assistance to recipient organizations are free from political interference, or even the appearance of such interference, and are based on merit, not based on the organization's religious affiliation or lack thereof.
- Make clear that faith-based organizations are eligible to participate in the Agencies' social service programs on the same basis as any other private organization.
- Replace the term "inherently religious activities" with the term "explicitly religious activities" in existing regulations, or establish "explicitly religious" in new regulations as the basis for determining which activities cannot be supported with direct Federal financial assistance.
- Make clear that all organizations that receive Federal financial assistance are prohibited from discriminating against beneficiaries in the provision of program services based on religion, a religious belief, a refusal to hold a religious belief, or a refusal to attend or participate in a religious practice, while also noting that organizations that participate in programs funded by indirect financial assistance need not modify their program activities to accommodate beneficiaries who choose to expend the indirect aid on those organizations' programs.
- Distinguish between "direct" and "indirect" Federal financial assistance.
- Require faith-based organizations that receive direct Federal financial assistance under a domestic social service program to provide written notice of certain protections to beneficiaries of the program. Specifically, an organization that receives direct Federal financial assistance, as defined in these final regulations, is required to give notice to beneficiaries that—

(1) The organization may not discriminate against a beneficiary based on religion, a religious belief, a refusal to hold a religious belief, or a refusal to attend or participate in a religious practice;

(2) The organization may not require a beneficiary to attend or participate in any explicitly religious activities that are offered by the organization, and any participation by the beneficiaries in those activities must be purely voluntary;

(3) The organization must separate in time or location any privately funded explicitly religious activities from activities supported by direct Federal financial assistance;

(4) If a beneficiary or prospective beneficiary objects to the religious character of the organization, the organization will undertake reasonable efforts to identify and refer the beneficiary to an alternative provider to which the beneficiary does not object; and

(5) A beneficiary or prospective beneficiary may report violations of these protections, including any denials of services or benefits, to the Federal agency or intermediary administering the program.[6]

- To account for unique circumstances that could arise under some programs, provide that, when the nature of the service provided or exigent circumstances make it impracticable to provide the written notice in advance of the actual service, domestic service providers must advise beneficiaries of their protections at the earliest available opportunity.
- Require faith-based recipients of domestic direct social service program assistance to undertake reasonable efforts to identify an alternative provider, if a beneficiary or prospective beneficiary objects to the religious character of the faith-based organization, and to refer the beneficiary to an identified alternative provider.
- Make clear that a faith-based organization that provides services to a beneficiary supported only by "indirect Federal financial assistance" is not required to (1) provide written notice to beneficiaries, (2) make reasonable efforts to refer a beneficiary to an alternative provider if the beneficiary objects to the religious character of the faith-based provider, or (3) separate explicitly religious activities in time or location from programs supported with indirect Federal financial assistance.[7]

III. Cross-Cutting Public Comments

The major cross-cutting issues that were raised in the comments are discussed in this part III of the preamble. Many commenters filed similar or identical comments with all the Agencies. Thus, unless otherwise noted in response to a particular comment, the responses in this part are adopted by the Agencies, regardless of whether a particular Agency received a particular comment. This preamble does not discuss editorial suggestions made by the commenters.

The Agencies note that, after each discussion of a comment, there are two headings: "Change" and "Affected regulations." Under the "Change" heading, the Agencies have tried to describe what types of changes have been made to the agency's proposed regulations in these final regulations as a result of the comment. Under the "Affected regulations" heading, the Agencies have sought to list only those sections of the final regulations that have been changed from the language in the NPRM as a result of the comment.

Some changes have been made to the proposed regulations in order to assure greater uniformity across Agencies in the final regulations, consistent with the fundamental principles described in section 2 of the Executive order. These uniformity changes are described in the agency-specific sections of part IV of this preamble. Also, comments that raised agency-specific issues or require explanation of how a cross-cutting issue affects certain agency-specific programs are addressed in part IV of this preamble.

A. Prohibited Use of Direct Federal Financial Assistance

1. "Explicitly Religious" Activities

Summary of comments: Several commenters expressed support for the proposal to replace the term "inherently religious activities," which appears in some Agencies' current regulations, with the term "explicitly religious activities" and to define that term to include activities that involve overt religious content such as worship, religious instruction, or proselytization. These commenters also suggested that the Agencies add language to the regulations that would further clarify which activities cannot be subsidized by direct Federal financial assistance or mixed with activities funded by such aid. Some commenters suggested that the regulations incorporate the Advisory Council's full explanation of the term "explicitly religious activities."[8]

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[5] Some of the Agencies have special features in their regulations or depart from the consensus approach described in the joint preamble. To the extent that an Agency departs from the joint preamble, the decision is explained in part IV of this preamble, which contains the discussion of agency-specific issues.

[6] After any such allegations are made, they will be examined by the Federal agency or intermediary administering the program.

[7] These clarifications are consistent with *Zelman* v. *Simmons-Harris,* 536 U.S. 639, 652–53 (2002), discussed in part III.B below.

[8] In its report, the Advisory Council stated that the Government is prohibited from "directly subsidizing any explicitly religious activity, meaning any activities that involve overt religious content. Thus, direct Federal aid should not be used to pay for activities such as religious instruction,

Also, several commenters suggested that more of the Agencies should include language in their regulations that is similar to language in DOJ's current regulations, which state that faith-based organizations should not be disqualified from receiving Federal financial assistance due to their religious motivation, influence, character, or affiliation. See existing regulations at 28 CFR 38.1(e).

Response: The Agencies are satisfied that the definition for "explicitly religious activities" set forth in the proposed regulations is the most appropriate one for regulatory text. It fairly describes the scope of the defined activities, while still being concise and uniform across the Agencies. The Agencies note that this regulatory definition includes key language from the Advisory Council's report and is grounded in relevant Supreme Court precedents such as *Hunt* v. *McNair,* 413 U.S. 734, 744–45 (1973) (finding no constitutional violation where a State project-financing program excluded facilities used for sectarian instruction or religious worship, and facilities used primarily by a school or department of divinity, from the scope of the program), and *Locke* v. *Davey,* 540 U.S. 712, 725 (2004) (finding that State had "historic and substantial" interest in denying funds for "vocational religious instruction," even as part of indirect aid program).

The Agencies recognize that the meaning of "explicitly religious" is central to many provisions of the regulations, but they believe that the term's meaning is best conveyed by reference to program-specific examples. Accordingly, the Agencies anticipate providing additional policy guidance or reference materials to recipients and to the public. For example, to the extent that particular direct aid programs involve counseling, the Agency will note in policy guidance or reference materials that counselors may not encourage beneficiaries to accept religious teachings or discourage them from doing so.

The Agencies also find it unnecessary to include additional language stating that faith-based organizations should not be disqualified from receiving Federal financial assistance due to their religious motivation, influence, character, or affiliation. In its proposed regulations, DOJ included language on this issue in the context of restating all of its current regulations on partnerships with faith-based and other neighborhood organizations in addition to the regulations it proposed to add or alter as part of this rulemaking. 80 FR at 47324 (proposed 28 CFR 38.5(d)). DOJ's current regulations state that faith-based organizations should not be disqualified from receiving Federal financial assistance due to their religious motivation, influence, character, or affiliation. 28 CFR 38.1(e). In addition, HHS's proposed regulations combined its existing regulations on faith-based and other neighborhood organizations that had been in separate sections (one addressing discretionary grants and another discussing formula and block grants) into one entirely new part that addresses all grants. Thus, HHS's current and proposed regulations state that organizations may not be disqualified from participating in the HHS awarding agency's programs because the organizations "are motivated or influenced by religious faith to provide social services, or because of their religious character or affiliation." 28 CFR 87.1(f) (current); 80 FR at 47280 (proposed 45 CFR 87.3(e)). DHS does not have current regulations regarding these partnerships, so DHS included this concept in its proposed regulations. 80 FR at 47297 (proposed 19 CFR 19.3(e)). ED, USDA, USAID, HUD, DOL, and VA have similar current regulations, but did not restate those regulations as a part of this rulemaking. In sum, Agencies other than DHS already have such language in their current regulations, and DHS is making minor changes to better align with the other Agencies to ensure that religious organizations may seek assistance without discrimination based on the organization's religious character, affiliation, influence, or motivation. See final regulations at 6 CFR 19.3(e) (DHS); 7 CFR 16.3(a) (USDA); 22 CFR 205.1(f) (USAID); 24 CFR 5.109(c) (HUD); 28 CFR 38.5(d) (DOJ); 29 CFR 2.32(c) (DOL); 34 CFR 75.52(a)(2), 76.52(a)(2) (ED); 38 CFR 62.62(a) (VA); 45 CFR 87.3(a), (e) (HHS).

Change: DHS has made a minor change to align with the other Agencies.

Affected regulations: 6 CFR 19.3(e) (DHS).

2. Chaplaincy

Summary of comments: Some commenters supported the proposed regulatory language of several Agencies noting that chaplaincy services are not "explicitly religious activities" subject to direct Federal financial assistance restrictions. See, *e.g.,* proposed regulations at 80 FR at 47323 (28 CFR 38.2(b)) (DOJ). These commenters also urged other agencies, such as HUD and ED, to include similar language in their final regulations. Another commenter objected to the proposed regulatory language—*i.e.,* that "services that can be publicly funded under the Establishment Clause, such as chaplaincy services, . . . would not be considered explicitly religious activities that are subject to direct financial aid restrictions"—on the ground that this language was broad and vague.

Other commenters objected to regulatory language providing more generally that "[r]eligious activities that can be publicly funded under the Establishment Clause" are also excluded from the definition of "explicitly religious activities." See, *e.g.,* proposed regulations at 80 FR at 47323 (28 CFR 38.2(b)) (DOJ). These commenters contended that this language was too broad and ambiguous. These commenters said that "[t]he instances in which the providers may include explicitly religious activities" in programs funded by direct aid "are extremely rare" and limited to situations in which "the government facilitates the private and voluntary religious practices of individuals, on a denominational-neutral basis, because those individuals lack access to their own religious community due to the action of government or being in government custody, *e.g.,* the individual is in the military, imprisoned, or confined to a government-funded hospital." Accordingly, these commenters requested that the Agencies "more accurately explain this very limited exception."

Response: The Agencies agree that direct Federal funding for religious activities is constitutionally permissible and necessary under limited circumstances, such as for chaplaincy services. For example, chaplaincy services are offered to beneficiaries such as students in rural training camps or inmates in prison who may otherwise be unable to freely access religious services by virtue of the location of their program or a limitation on their freedom of movement. *See Cruz* v. *Beto,* 405 U.S. 319, 322 n.2 (1972) (per curiam) (all prisoners must be given reasonable opportunities to exercise their First and Fourteenth Amendment religious freedoms without fear of penalty); *Katcoff* v. *Marsh,* 755 F.2d 223, 234 (2d Cir. 1985) (First Amendment requires government to make religion available to soldiers deployed to locations where their own religious denominations are not available to them). The Agencies

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devotional exercises, worship, proselytizing or evangelism; production or dissemination of devotional guides or other religious materials; or counseling in which counselors introduce religious content. Similarly, grant or contract funds may not be used to pay for equipment or supplies to the extent they are allocated to such activities." Advisory Council Report at 129–30 (footnotes omitted).

agree that not all of the proposed regulations addressed the exclusion of services that can be publicly funded consistent with the Establishment Clause, such as chaplaincy services. However, the Agencies also believe that they should retain whatever discretion is afforded them under applicable Federal law to fund, or not to fund, other such activities that can be publicly funded consistent with the Establishment Clause, while following any prohibitions against funding such activities consistent with their funding statutes. The intention of this rulemaking is not to disturb this practice. The Agencies agree that the proposed regulations did not all provide sufficient clarity in this regard.

Change: The Agencies affected by these comments (DHS, USAID, DOJ, VA and HHS) accordingly have made clear that their final regulations do not apply to explicitly religious activities that can be publicly funded consistent with the Establishment Clause, such as chaplaincy services. All the Agencies agree that whether such activities should be funded, and if so, whether they should be subject to restrictions such as the separation in time and location requirement, is to be left to the future determination of the Agencies on a case-by-case basis, based on applicable Federal law and the Agencies' discretion under that law to determine whether and under what conditions the expenditure is appropriate. These regulations do not displace this discretion.

Some of the Agencies participating in this final rulemaking must address these comments differently because they do not have any chaplaincy programs or language about chaplaincy in their current rules (ED, HUD, USDA) or because they are not changing their current language on the subject (DOL). Those Agencies will explain the basis for their different approaches in the agency-specific preambles following this joint preamble.

Affected regulations: 6 CFR 19.4(e) (DHS); 22 CFR 205.1(b) (USAID); 28 CFR 38.2(b)–(c), 38.5(a) (DOJ); 38 CFR 50.1(a) (VA); 45 CFR 87.3(b) (HHS).

3. Nondiscrimination and Programs Funded in Part by Federal Financial Assistance

Summary of comments: Some commenters suggested that the Agencies' proposed regulations should be amended to clarify that the nondiscrimination provisions apply to programs whether they are completely or only partially funded by Federal financial assistance.

Response: This clarification is not necessary as the regulations generally state that programs "supported" with Federal financial assistance are subject to the regulations—language that encompasses programs funded partially by Federal financial assistance. In addition, the language regarding funding "in whole or in part" is already contained in the model written notice of beneficiary rights (adopted by all of the Agencies except USAID), which begins (with some minor variation across Agencies), "Because this program is supported *in whole or in part* [emphasis added] by financial assistance from the [Federal Government or Agency], we are required to let you know that" beneficiaries have the following rights. See final regulations at 6 CFR part 19, appendix A (DHS); 7 CFR part 16, appendix A (USDA); 28 CFR part 38, appendix A (DOJ); 29 CFR 2.39, appendix A (DOL); 34 CFR part 75, appendix A (ED). Some agencies have not included the notice in their final regulations. Instead, these agencies have included the notice as appendices to this final rulemaking. See appendix E (HUD); appendix H (VA); appendix I (HHS).[9]

Change: None.

Affected regulations: None.

B. Direct and Indirect Federal Financial Assistance[10]

Summary of comments: The Agencies received several comments regarding the relationship between indirect financial assistance, beneficiary protections, and participation in indirectly funded programs that permissibly include religious content. Many commenters took the position that faith-based organizations should not be able to turn away prospective beneficiaries on the basis of religion. Some commenters requested that the regulations make clear that participants in programs funded only by indirect Federal financial assistance could be required to take part in religious activities related to the program as a condition of participation. These commenters suggested that, once a beneficiary chooses a religious program from a range of options that includes an adequate secular alternative, it would not be discriminatory for the organization to require the beneficiary to participate in the religious aspects of the program. Additionally, one of these commenters requested that several Agencies clarify that programs funded by indirect assistance need not be separated in time or location from programs or activities with explicit religious content. Other commenters requested that the Agencies apply the prohibitions on discrimination against beneficiaries equally to indirect and direct aid programs, with the consequence that programs funded by indirect aid would not be able to impose a requirement of participation in religious activities within a program. These commenters stated that applying the nondiscrimination prohibitions to indirect as well as direct aid better reflected the text and intent of Executive Order 13559.

Commenters with a variety of perspectives on these issues noted opportunities for revising various provisions of the regulations to reflect their positions, whether by inserting language more sharply differentiating the regulations applicable to direct and indirect Federal financial assistance, or by removing language in some current and proposed regulations that did differentiate them. Some commenters also urged that the definition of "indirect Federal financial assistance" be revised to better reflect requirements for "true private choice" as set forth in *Zelman* v. *Simmons-Harris,* 536 U.S. 639, 653–54 (2002).

Response: As some of the commenters noted, the text of section 2(d) of the Executive order does not limit beneficiary nondiscrimination obligations to direct aid programs. Most Agencies, in the preambles to their individual notices of proposed rulemaking, did not distinguish between discrimination against beneficiaries under indirect and direct aid programs for purposes of beneficiary admissions. They also included language to the effect that the Executive order made it clear that all organizations that receive Federal financial assistance for the purpose of delivering social welfare services are prohibited from discriminating against beneficiaries or potential beneficiaries of those programs on the basis of religion, a religious belief, a refusal to hold a religious belief, or a refusal to attend or participate in a religious practice. See proposed regulations at 80 FR at 47246 (USDA); 80 FR at 47258 (ED); 80 FR at 47275 (HHS); 80 FR at 47288 (DHS); 80 FR at 47319 (DOJ); 80 FR at 47332 (DOL); 80 FR at 47343 (VA). By contrast,

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[9] The appendices at the end of this document appear after the signatures of the responsible agency officials and are designated so that each appendix designation corresponds to the designation of that agency's section of the preamble in part IV. For example, HUD's agency-specific preamble appears in part IV.E, and its appendix is designated as appendix E.

[10] USAID does not fund programs involving indirect Federal financial assistance, as that term is used within these final regulations. Therefore "the Agencies," as used in this part III.B of the preamble, does not include USAID.

HUD did not address this matter in its preamble.

As commenters noted, however, there was considerable variation in the way the Agencies addressed this issue in their proposed regulations. Some Agencies (DHS and DOJ) would have limited nondiscrimination obligations to recipients of direct aid. See proposed regulations at 80 FR at 47298 (6 CFR 19.5) (DHS); 80 FR at 47324 (28 CFR 38.5(c)) (DOJ). Other Agencies (HUD and HHS) would have expressly made these nondiscrimination obligations apply to all programs funded by Federal financial assistance, which would include both direct and any indirect aid programs. See proposed regulations at 80 FR at 47311 (24 CFR 5.109(h)) (HUD); 80 FR at 47280 (45 CFR 87.3(d)) (HHS). ED's proposed regulations did not address this issue because ED has existing regulations that prohibit religious discrimination by recipients of grants and subgrants awarded under ED programs (see existing regulations at 34 CFR 75.52(e), 76.52(e)), and the only indirect aid program it manages is subject to specific statutory provisions that prohibit religious discrimination against beneficiaries.[11] Although some Agencies (DOL, USDA, and VA) have existing regulations that would appear to limit nondiscrimination obligations to recipients of direct aid, those Agencies did not describe in their NPRMs how this issue is addressed under their current regulations. See existing regulations at 7 CFR 16.3(a) (USDA); 29 CFR 2.33(a) (DOL); 38 CFR 62.62(e) (VA).

In responding to the comments and formulating final regulations, the Agencies focused on the value of achieving uniformity on this issue. Executive Order 13559 established the Interagency Working Group with the specific purpose of creating as much uniformity as possible in these regulations. Executive Order 13279, § 3, as amended by Executive Order 13559, § 1(c). Achieving greater uniformity on this issue will better serve providers and beneficiaries, especially those who are involved in programs administered by more than one agency, by avoiding subjecting them to inconsistent obligations.

The Agencies also focused on the fact that the text of section 2(d) of the Executive order does not limit these nondiscrimination obligations to direct aid programs. It states that all organizations that receive Federal financial assistance under social service programs should be prohibited from discriminating against beneficiaries or prospective beneficiaries of the social service programs on the basis of religion or religious belief. It also states that, in providing services supported in whole or in part with Federal financial assistance and in their outreach activities related to such services, no organizations should be allowed to discriminate against current or prospective program beneficiaries on the basis of religion, a religious belief, a refusal to hold a religious belief, or a refusal to attend or participate in a religious practice.

Moreover, by ensuring that beneficiaries and potential beneficiaries cannot be required to even attend or in any way participate in a religious practice, Executive Order 13559 strengthened the nondiscrimination requirements previously in place in several respects. Compare Executive Order 13279, § 2(d), 67 FR at 77142 (organizations should not be allowed to discriminate against current or prospective beneficiaries on the basis of "a refusal to actively participate in a religious practice"), with Executive Order 13279, § 2(d), as amended by Executive Order 13559, 75 FR at 71320 (organizations should not be allowed to discriminate against current or prospective beneficiaries based on "a refusal to attend or participate in a religious practice").

Additionally, the Agencies focused on the potential implications of the various approaches urged in the comments. In particular, the Agencies focused on the potential implications of maintaining the current regulations of some of the Agencies, which would seemingly allow providers to turn away indirect aid beneficiaries on the basis of religion or religious beliefs or lack thereof. Such an outcome seems inconsistent with a key policy goal articulated by Executive Order 13559—strengthening religious liberty protections for beneficiaries. It also seems inconsistent with the views of many of the commenters.

In light of these considerations, the final regulations closely track the Executive order and are uniform across the Agencies. Specifically, the final regulations of each Agency state that any organization that participates in a program funded by Federal financial assistance shall not, in providing services or in outreach activities related to such services, discriminate against a program beneficiary or prospective program beneficiary on the basis of religion, a religious belief, a refusal to hold a religious belief, or a refusal to attend or participate in a religious practice. See final regulations at 6 CFR 19.5 (DHS); 7 CFR 16.4(a) (USDA); 24 CFR 5.109(h) (HUD); 28 CFR 38.5(c) (DOJ); 29 CFR 2.33(a) (DOL); 2 CFR 3474.15(f), 34 CFR 75.52(e), 76.52(e) (ED); 38 CFR 50.1(f), 61.64(a), 62.62(a) (VA); 45 CFR 87.3(d) (HHS). At the same time, the final regulations provide that an organization that participates in a program funded by indirect financial assistance need not modify its program activities to accommodate a beneficiary who chooses to expend the indirect aid on the organization's program. See final regulations at 2 CFR 3474.15(f), 34 CFR 75.52(e), 76.52(e) (ED); 6 CFR 19.5 (DHS); 7 CFR 16.4(a) (USDA); 24 CFR 5.109(h) (HUD); 28 CFR 38.5(c) (DOJ); 29 CFR 2.33(a) (DOL); 38 CFR 50.1(f) (VA); 45 CFR 87.3(d) (HHS).

For example, a faith-based organization receiving indirect aid that offers a Bible study as part of its programming need not remove that study from its program activities or create alternative programming for an indirect aid beneficiary who does not wish to participate in the Bible study. Faith-based organizations offering for sale food that is compliant with a particular religious diet could take a form of indirect assistance as payment for that food without also offering food that is compliant with some other religious diet. And a substance abuse recovery program, like a 12-step program, that includes religious content that is integral to the program would not be required to alter its program to accommodate an objector who pays for the program with indirect aid.

Finally, the Agencies note that the definition of "indirect financial assistance" aligns with the constitutional principles addressed in *Zelman* v. *Simmons-Harris*, 536 U.S. 639 (2002), and believe that the framework set out in *Zelman* further supports the Agencies' decision with respect to nondiscrimination against beneficiaries of indirect assistance. In *Zelman*, the Supreme Court reasoned that the State school voucher program at issue did not offend the Establishment Clause because, among other things, the program placed the benefit in the hands of individuals, who in turn had the freedom to choose the school to which they took their benefit and "spent" it, whether that school was public or private, nonreligious or religious. Id. at 652–53. In those circumstances, the Court explained, the government cannot be understood to advance or endorse any explicitly religious programs that may be among the options available to beneficiaries. Id. It bears note that the voucher scheme at issue in *Zelman*, which was described by the Court as a program of "true private choice," was neutral toward religion and offered beneficiaries adequate secular options. *Id.* at 653, 655–56. Accordingly, the Agencies included these criteria in the proposed definition of "indirect financial assistance." As also noted in those Agencies' final regulations, "indirect" Federal financial assistance places the choice of service provider in the hands of a beneficiary before the Government pays for the cost of that service through a voucher, certificate, or other similar means. See final regulations at 6 CFR 19.2 (DHS); 7 CFR 16.2(b)(1) (USDA); 24 CFR 5.109(b) (HUD); 28 CFR 38.3(b) (DOJ); 29 CFR 2.31(a)(2) (DOL); 34 CFR 75.52(c)(3)(ii), 76.52(c)(3)(ii) (ED); 38 CFR 50.1(b)(3) (VA); 45 CFR 87.1(c) (HHS). In these cases, the Government empowers beneficiaries to choose for themselves whether to receive the needed services from an entity that incorporates explicitly religious activities into federally supported programs or an entity that does not do so. Notably, the voucher program upheld in *Zelman* required participating private schools to "agree not to discriminate on the basis of race, religion, or ethnic background." 536 U.S. at 645.

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[11] See Scholarships for Opportunity and Results Act, Public Law 112–10, div. C, § 3008, 125 Stat. 38, 204 (2011), which prohibits discrimination against beneficiaries on the basis of religion.

Change: Agencies that had differentiated between direct and indirect assistance with respect to nondiscrimination obligations have removed that distinction in their final regulations. The Agencies have also added language making clear that programs funded by indirect financial assistance need not modify those programs to accommodate a beneficiary. Where needed, the Agencies have added language making it clear that the separation in time or location requirement only applies to programs funded by direct assistance.

Affected regulations: 2 CFR 3474.15(f); 34 CFR 75.52(e), 76.52(e) (ED); 6 CFR 19.5 (DHS); 7 CFR 16.4(a) (USDA); 28 CFR 38.5(c), 38.8(a) (DOJ); 29 CFR 2.33(a) (DOL); 38 CFR 50.1(f) (VA); 45 CFR 87.3(d) (HHS).

C. Intermediaries

1. Compliance

Summary of comments: Commenters recommended that the Agencies use comprehensive language that requires intermediaries to ensure that the recipients they select comply with the Executive order as well as any implementing regulations or guidance. Commenters also recommended that the Agencies adopt a provision proposed by DOJ that spells out the responsibilities of State or local governments or other organizations acting as intermediaries or pass-through recipients that provide subgrants to service providers ("intermediaries") by requiring intermediaries to "give reasonable assurance[s] that [they] will comply with this [regulation] and effectively monitor the actions of [their] recipients." See proposed regulations at 80 FR at 47325 (28 CFR 38.7(b)).

Response: The Agencies require that intermediaries comply with these regulations and effectively monitor the actions of their recipients. This preamble and the final regulations of most of the Agencies clearly state that intermediaries must ensure that providers to which they disburse Federal financial assistance comply with the regulations. See final regulations at 6 CFR 19.2 (DHS); 7 CFR 16.2(c) (USDA); 24 CFR 5.109(f) (HUD); 28 CFR 38.3(c)(2) (DOJ); 29 CFR 2.33(c) (DOL); 34 CFR 75.714, 76.714 (ED); 38 CFR 50.1(e) (VA); 45 CFR 87.3(m), 1050.3(h) (HHS). As an example, subgrantee compliance could be ensured by the conditions included in the notice of the Federal award. However, to reflect the variety of programs with different reporting and monitoring requirements of each Agency, the Agencies individually will determine how the intermediary ensures subgrantee compliance.

Change: The final regulations of each Agency (excluding USAID) provide that an intermediary given authority to select an organization to receive Federal financial assistance must ensure that the organization complies with these final regulations. Some of the Agencies participating in these final regulations will address this comment differently. Those Agencies that address this comment differently explain the basis for that differentiation in their agency-specific preambles following this joint preamble.

Affected regulations: 34 CFR 75.714, 76.52, 76.712–76.714 (ED); 38 CFR 50.1(e) (VA).

2. Comprehension of Requirements

Summary of comments: To ensure that subrecipients understand they are subject to the same obligations as the non-government organization that receives a prime award, commenters recommended that the Agencies mirror USAID's explanatory information and regulatory language stating that receipt of Federal financial assistance includes a prime award or sub-award. See proposed regulations at 80 FR at 47240 (22 CFR 205.1) (USAID).

Response: The Agencies believe that the final regulations are sufficiently explicit because the Agencies (other than USAID) first designate subgrantees as recipients of "direct Federal financial assistance" if the award is received through programs administered by States or other intermediaries that are themselves recipients of Federal financial assistance, and then describe the responsibilities of recipients of direct Federal financial assistance. See final regulations at 6 CFR 19.2 (DHS); 7 CFR 16.2(b)(2) (USDA); 24 CFR 5.109(b) (HUD); 28 CFR 38.3(a)(2) (DOJ); 29 CFR 2.31(a)(1), (a)(3) (DOL); 34 CFR 75.52(c)(3)(i), 76.52(c)(3)(i) (ED); 38 CFR 50.1(b)(1), (c) (VA); 45 CFR 87.1(b), (c)(2) (HHS). The regulations provide that these subrecipients are *not* considered recipients of indirect Federal financial assistance for purposes of the Executive order and the regulations. For example, ED has regulations governing faith-based and other neighborhood organizations that specifically impose requirements on both grantees and subgrantees, including the requirements in these final regulations. See final regulations at 34 CFR 76.52(c)(3)(i). The Agencies also believe that adding a parenthetical phrase such as "(including through a prime award or sub-award)" when referring to recipients of direct Federal financial assistance could be misinterpreted because not all Agencies use those terms in their regulations. Although USAID uses different language to ensure that recipients at all levels of assistance are subject to the requirements in these regulations, all of the Agency regulations concerning recipients of direct Federal financial assistance apply equally to recipients, subrecipients, and contractors of those entities that provide services under a program of Federal financial assistance. USAID's language provides additional clarity for its grantees because the term "direct financial assistance" is not defined or often used in USAID's regulations and standard award provisions. See final regulations at 22 CFR 205.1(b), (e), (f) (USAID).

Change: None.

Affected regulations: None.

D. Protections for Beneficiaries [12]

1. Beneficiary Notice

a. Written Notice Requirement for Providers That Receive Indirect Federal Financial Assistance

Summary of comments: Commenters requested that the Agencies change their proposed regulations to require that providers that receive indirect Federal financial assistance provide written notice to beneficiaries in the same manner as providers that receive direct Federal financial assistance. Commenters asserted that there are protections for beneficiaries when accessing programs of providers that receive indirect Federal financial assistance, such as nondiscrimination against beneficiaries, and those beneficiaries would be unaware of such protections without a written notice. Commenters stated that a written notice would help protect the religious liberty rights of the clients and beneficiaries of all federally funded programs. One commenter noted that many lesbian, gay, bisexual, and transgender individuals have experienced discrimination and denial of services without being aware that they cannot be denied services because of a religious objection to their identity. Other commenters asserted the opposing view, *i.e.,* that the Agencies' proposed regulations do not clarify that providers in receipt of indirect Federal financial assistance are not subject to the nondiscrimination requirements set forth in Executive Order 13559 and that the Agencies' regulations should clarify that beneficiary protections such as nondiscrimination only apply when providers receive direct Federal financial assistance.

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[12] USAID is not establishing requirements for written notices to beneficiaries or for referrals to alternative providers, for the reasons stated in its agency-specific preamble. Therefore "the Agencies," as used in part III.D, does not include USAID.

Response: The Agencies decline to extend the written notice requirement to recipients of indirect Federal financial assistance. The Agencies interpret section 2(d) of the Executive order to apply the requirement of nondiscrimination in program admission and outreach to all Federal financial assistance (both direct and indirect), as previously stated in part III.B. However, the Agencies have decided not to change their regulations to require providers receiving indirect Federal financial assistance to provide a written notice of beneficiary protections. The Executive order requires written notice to a beneficiary of his or her right to seek a referral to another provider because the Government or an intermediary was the one to select the provider and award assistance to the provider or purchase services from that provider under a grant or subgrant. In contrast, indirect Federal financial assistance places the choice of provider in the hands of a beneficiary through a voucher, certificate, or other similar means before the Government pays for the services. In the case of indirect Federal financial assistance, because the beneficiary may use the voucher or other means to obtain services from a provider of their choice at the outset, providing a written notice to such a beneficiary to seek referral to another provider is unnecessary.

Also, the nature of certain indirect aid programs would make it extremely difficult to ensure that all beneficiaries receive a written notice. For example, there are more than a quarter million stores, farmers' markets, direct marketing farmers, homeless meal providers, treatment centers, group homes, and other participants across the nation that are authorized Supplemental Nutrition Assistance Program (SNAP) retailers. If providers receiving indirect aid were required to give written notice to beneficiaries, all of these retailers would have to have the notices ready at all times to provide to any person using SNAP benefits. While the Agencies decline to impose this requirement, they note that, in appropriate cases, they may encourage indirect aid recipients to inform beneficiaries of the protections provided under these regulations.

The Agencies also note that, while these regulations do not require written notice for indirect recipients of Federal financial assistance, there may be other applicable statutory or regulatory obligations that require recipients to notify beneficiaries that discrimination on the basis of religion is prohibited.

Change: The response above clarifies that providers of indirect Federal financial assistance are not required to provide a written notice, and USDA and VA have amended their regulations accordingly. The remaining Agencies' final regulations are also clear on this point.

Affected regulations: 7 CFR 16.4(h) (USDA); 38 CFR 50.2(c) (VA).

b. Written Notice Language

Summary of comments: Commenters requested that the Agencies change their proposed regulations to add language to the written notice requirement to clarify that providers may not discriminate against beneficiaries or potential beneficiaries based on "a refusal to hold a religious belief, or a refusal to attend or participate in a religious practice." Commenters also recommended that the notice include a more expansive explanation of what constitutes explicitly religious activities. In addition, commenters requested that the written notice include specific mention of any services or information that providers refuse to provide due to religious or moral objections.

Response: In addition to prohibiting discrimination on the basis of religion or religious belief, Executive Order 13559 amends Executive Order 13279 to state that providers must not discriminate against beneficiaries or prospective beneficiaries on the basis of "a refusal to hold a religious belief, or a refusal to attend or participate in a religious practice." 75 FR at 71320. Although all relevant Agencies recognized in the preambles to their proposed regulations that a federally funded provider could not discriminate against a beneficiary or prospective beneficiary because of "a refusal to hold a religious belief, or a refusal to attend or participate in a religious practice," the quoted language did not appear in all of the Agencies' proposed regulations.

The Agencies agree with the commenter that the quoted language should be included in Agencies' written notices. Further, the Agencies' regulations should similarly include this language. Regarding the request to provide a more specific explanation of what constitutes explicitly religious activities, the Agencies believe that the notice needs to remain more general because it must be provided across a broad array of programs. Adding more specificity could lead to confusion in the context of some programs. Therefore, the Agencies decline to include in the beneficiary notice a more expansive explanation or specific list of activities that are considered "explicitly religious."

The Agencies also decline to require providers to specifically mention any services or information that the provider refuses to provide due to religious or moral objections. The Agencies believe that such issues are beyond the scope of the Executive order.

Change: The Agencies' final regulations clarify the rights of beneficiaries by requiring that the notice to beneficiaries state explicitly that a federally funded provider may not discriminate against a beneficiary or prospective beneficiary because of "a refusal to hold a religious belief, or [a] refusal to attend or participate in a religious practice."

Affected regulations: 6 CFR 19.5, 19.6(a)(1), 6 CFR part 19, appendix A (DHS); 7 CFR 16.4(f)(1)(i) (USDA); 24 CFR 5.109(g)(1)(i) (HUD); 28 CFR 38.6(c)(1)(i), 28 CFR part 38, appendix A (DOJ); 29 CFR 2.34(a)(1) (DOL); 34 CFR 75.712(a)(1), 34 CFR part 75, appendix A, paragraph (1), 34 CFR 76.712(a)(1) (ED); 38 CFR 50.2(a)(1) (VA); 45 CFR 87.3(i)(1)(i) (HHS).

c. Reporting Violations of the Protections in the Written Notice

Summary of comments: Commenters recommended that the Agencies include DOJ's proposed reporting language in the required written notices; this language stated that "[b]eneficiaries may report an organization's violation of these protections or file a written complaint of any denials of services or benefits by an organization with the Office for Civil Rights or the intermediary that awarded funds to the organization." See proposed regulations at 80 FR at 47325 (28 CFR 38.6(c)(1)(v) (DOJ)). Most Agencies' proposed regulations and written notices provided that beneficiaries "may report violations of these protections" to the Agency, intermediary, or appropriate civil rights office but did not provide that beneficiaries could specifically file a written complaint to report denials of services or benefits. See proposed regulations at 80 FR at 47311 (24 CFR 5.109(g)(1)(v)) (HUD); 80 FR at 47337 (29 CFR 2.34(a)(5)) (DOL); 80 FR at 47251 (7 CFR 16.4(f)(1)(v)) (USDA); 80 FR at 47267, 47268 (34 CFR 75.712(a)(5), 76.712(a)(5)) (ED); 80 FR at 47281 (45 CFR 87.3(i)(1)(v)) (HHS); 80 FR at 47298 (6 CFR 19.6(a)(5)) (DHS); 80 FR at 47346 (38 CFR 50.2(a)(5)) (VA). Commenters also requested that the Agencies allow beneficiaries to report violations to more than one office, provide for reporting to both the Agency and intermediary, and designate an appropriate civil rights office to receive complaints.

Response: The relevant Agencies agree with a majority of these commenters' concerns and provide in their final regulations that the written notice must make beneficiaries aware that they can report violations of these protections, including reports of any denials of services or benefits by organizations. In addition, some of the Agencies have chosen to designate their offices of civil rights as the proper offices to receive complaints. For instance, in its final regulations, DOL directs beneficiaries to file complaints with the Agency's Civil Rights Center. 29 CFR 2.34(a)(5). Some of the Agencies are not, however, designating their offices of civil rights to accept beneficiary complaints because the structure of those Agencies would not support such a designation. The Agencies will describe the reporting process in the agency-specific sections of this preamble based on the nature of each program and Agency.

Change: All Agencies affected by these comments have amended the written notice requirements in their respective final regulations and their model written notices to indicate expressly that complaints regarding any denials of services or benefits may be filed with the relevant offices. DOJ has also made a non-substantive change to its written notice requirement for the sake of clarity.

Affected regulations: 2 CFR 3474.15(c)(1), 34 CFR 75.712(a)(5), 34 CFR part 75, appendix A, 34 CFR 76.712(a)(5) (ED); 6 CFR 19.6(a)(5), 6 CFR part 19, appendix A (DHS); 7 CFR 16.4(f)(1)(v) (USDA); 24 CFR 5.109(g)(1)(v) (HUD); 28 CFR 38.6(c)(1)(v) (DOJ); 29 CFR 2.34(a)(5) (DOL); 34 CFR 75.712(a)(5), appendix A to part 75, 76.712(a)(5); 38 CFR 50.2(a)(5) (VA); 45 CFR 87.3(i)(1)(v) (HHS).

d. Guarantee of Referral in the Written Notice

Summary of comments: Commenters requested that the Agencies remove the phrase "[w]e cannot guarantee . . . that in every instance, an alternative provider will be available" from the model referral form, see, *e.g.*, proposed regulations at 80 FR at 47325 (28 CFR part 38, appendix A) (DOJ); 80 FR at 47337 (29 CFR 2.34(a)) (DOL), because commenters asserted that such language may deter beneficiaries from objecting to the religious character of providers and from seeking alternative providers.

Response: The Agencies disagree with commenters that the phrase "we cannot guarantee that in every instance, an alternative provider will be available" should be removed from the referral form. Such a disclaimer statement is necessary in cases where, for example, the remote location of the services being provided may make such a promise impossible. The Agencies also disagree with the commenters' prediction that beneficiaries will be deterred from seeking alternative providers due to the lack of a guarantee of an alternate provider. Written notification of the ability to seek an alternative provider facilitates the opportunity to use an alternative provider when available. However, failure to acknowledge the potential lack of an alternative provider in the written notice could be misleading to a beneficiary. The Agencies have not made any changes based on these comments.

Change: None.

Affected regulations: None.

e. Accessibility of the Written Notice

Summary of comments: Commenters suggested that the Agencies change their proposed regulations to require providers to translate the written notice into languages other than English for individuals with limited English proficiency (LEP), and to provide the written notice in accessible formats for individuals with disabilities. One commenter noted that ED's proposed regulations included language in the preamble authorizing "grantees, subgrantees, and contractors . . . to translate the notice into other languages and formats to communicate with the entire population of beneficiaries." See 80 FR at 47258.

Response: The Agencies agree that providers that receive Federal financial assistance, as defined by the Agencies' final regulations, have a responsibility to take reasonable steps to ensure for individuals with LEP meaningful access to their programs and activities in accordance with Title VI of the Civil Rights Act of 1964, 42 U.S.C. 2000d through 2000d-7, and Executive Order 13166, Improving Access to Services for Persons With Limited English Proficiency, 65 FR 50121, Aug. 11, 2000, as applicable.[13] Providing meaningful access for persons with LEP may entail providing language assistance services, including oral interpretation and written translation. Furthermore, the Agencies agree that providers receiving Federal financial assistance, as defined by the Agencies' regulations, have a responsibility to prohibit discrimination against individuals with disabilities and to ensure effective communication with individuals with disabilities, in accordance with section 504 of the Rehabilitation Act of 1973, 29 U.S.C. 794, and the Americans with Disabilities Act, 42 U.S.C. 12101 *et seq.*, as applicable. However, these requirements have not been included in these final regulations because other regulations or guidance already impose them.

Federal laws prohibiting discrimination on the basis of disability require, in pertinent part, provision of program access, necessary auxiliary aids and services, physical access, and reasonable modification and accommodations to policies, practices, and procedures for persons with disabilities. See, *e.g.*, existing regulations at 24 CFR parts 8 and 9 (HUD); 28 CFR parts 35 and 36 (DOJ); 34 CFR part 104 (ED). Recipients may contact their awarding Agencies for technical assistance on fulfilling their obligations to take reasonable steps to provide meaningful access for persons with LEP and to ensure effective communication with persons with disabilities. In fulfilling these obligations, recipients may be required to provide the written notice to beneficiaries in other languages and in accessible formats. The Agencies decline, therefore, to include in these final regulations the requirements described above because existing nondiscrimination authorities already cover those requirements.

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[13] Note that the definition of Federal financial assistance under these final regulations is broader in scope than the definition under title VI of the Civil Rights Act of 1964 and several other nondiscrimination authorities. Compare Executive Order 13279, § 1(a), with, *e.g.*, 28 CFR 42.102(c). Accordingly, some organizations that will be covered by these regulations will not be covered by title VI, most notably recipients of procurement contracts from the Agencies. Those organizations that fall outside the coverage of title VI may still have obligations to take reasonable steps to provide meaningful access to persons with LEP through implementation of Executive Order 13166, which imposes parallel language access requirements on federal agencies and their federally conducted programs and activities. See Executive Order 13166.

Change: None.

Affected regulations: None.

f. Services Not Provided and Prioritization of the Written Notice

Summary of comments: One commenter requested that the Agencies change their proposed regulations to require providers that receive direct Federal financial assistance to provide beneficiaries with a list of services that are not being offered if such providers refuse to offer those services due to religious or moral objections, as well as instructions about how to access the covered services from an alternative provider. This commenter also suggested that, "[i]n prioritizing when the highest notice standards should be implemented, the Departments should focus on those grantees that do not provide, due to religious or moral objection, specific services that beneficiaries are entitled to under any given program."

Response: The relevant Agencies believe that requiring providers to provide a list of the particular services that the provider offers and treating providers that do not offer certain services due to religious or moral objections differently is beyond the scope of Executive Order 13559. The Agencies, therefore, have not made any changes to the proposed regulations based on these comments.

Change: None.

Affected regulations: None.

g. Written Notice and Referral Forms

Summary of comments: Some of the Agencies' proposed regulations included a section that contained model written notice and referral forms. Commenters suggested that content appearing in some of the model forms, namely, a section designated as "for staff use only," see, *e.g.*, proposed regulations at 80 FR at 47312–13 (HUD), should appear on a separate page rather than on the form that is given to beneficiaries. The commenters' concern was that the "for staff use only" language, which included a space for staff to indicate whether a referral is or is not provided, may suggest to the beneficiaries that their requests for an alternative provider may be denied, which could make beneficiaries less likely to request an alternative provider. Commenters also suggested that the Agencies incorporate the written notice and referral forms into the regulatory text.

Response: The Agencies have set forth in the regulations minimum requirements for what must be in the written notice. For some Agencies, the written notice and referral forms provided in their proposed regulations were merely samples. See, *e.g.*, proposed regulations at 80 FR at 47247 (USDA); 80 FR at 47279 (HHS). For DOL and ED, the written notice and referral forms were required as part of their proposed rules and continue to be so required in these final regulations. See final regulations at 29 CFR 2.34(a)(5), 29 CFR part 2, subpart D, appendices A and B (DOL); 34 CFR 75.712(c), 34 CFR part 75, appendix A, 34 CFR 76.712(c) (ED). While the other Agencies decline to require specific written notice and referral forms as part of their regulations, all Agencies include model written notice and referral forms either as appendices to their regulations (see final regulations at 6 CFR part 19, appendix A (DHS); 7 CFR part 16, appendix A (USDA); 28 CFR part 38, appendices A and B (DOJ)) or as appendices to this joint final rulemaking (HUD, VA, HHS). Those Agencies that have not included a model written notice or referral form as part of their regulations have determined that such model forms are unnecessary as providers have the option of including the notifications required under these regulations with other notifications that providers are already required to provide under applicable statutes and other regulations. It is important to note that any Agency's future changes to its written notice and referral forms will have to comply with the regulations and the Paperwork Reduction Act.

The Agencies that have included a "for staff use only" section in their model forms (USDA and HUD) do not believe that including this section on the same page as the notice will impact beneficiaries' actions or will deter beneficiaries from requesting an alternative provider. Moreover, because those Agencies included the written forms only as a model, moving the "for staff use only" section is unnecessary because providers can include other formats as the commenters requested.

Change: DOL has moved the written notice and referral forms from the body of its proposed regulations to the appendices of its final regulations, but it has not made substantive changes based on this comment.

Affected regulations: None.

h. Burden of Written Notice

Summary of comments: Some commenters asserted that the written notice requirement is burdensome for religious organizations. For example, commenters stated that, "[t]he ramifications of implementing Executive Order 13559 by means of the proposed new rules would be to inevitably diminish the ability of the faith-based community and other neighborhood organization[s] to carry out their intended purposes of providing services to those in need in a timely and efficient manner."

Response: The Executive order requires that each beneficiary receive "written notice of the protections set forth" in the order. Executive Order 13559, § 1(b), amending Executive Order 13279, § 2(h)(ii)(5), 75 FR at 71321. The Agencies have implemented that requirement in a manner designed to limit the burden on recipients of direct Federal financial assistance and justified by the value to beneficiaries. Agencies are providing language that may simply be reproduced as a brief notice that the recipients provide or post[14] (depending on the particular regulatory requirements). This does not place an undue burden on recipients of direct Federal financial assistance, particularly when balanced against the notice's benefit—informing beneficiaries of valuable protections of their religious liberty. Accordingly, the Agencies decline to make any changes to their regulations based on these comments.[15]

Change: None.

Affected regulations: None.

i. Phase-in of Written Notice

Summary of comments: Commenters encouraged the Agencies to phase in the new notice and alternative provider referral requirements, and to implement these changes in a way that maximizes provider flexibility.

Response: The Agencies agree with the commenters that a phase-in period is appropriate. This period will allow the Agencies time to provide policy guidance or reference materials and training on these matters, including additional examples of the different ways providers can comply with these regulations. These regulations will become effective 30 days after publication in the **Federal Register**. However, recipients subject to these final regulations have until July 5, 2016 to comply with these final regulations.

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[14] For example, DHS made clear in its NPRM preamble that individual written notice will frequently be impractical during brief, potentially one-time interactions between a provider and a beneficiary, such as at a soup kitchen. See 80 FR at 47294 & n.7. In such circumstances, DHS explained, a conspicuous posting rather than individual notices should satisfy the requirement.

[15] The Agencies note that the burden imposed by these final regulations is discussed in each Agency's preamble section addressing burdens imposed under the Paperwork Reduction Act of 1995.

Change: These final regulations delay the date by which organizations will need to comply by 90 days to ensure sufficient time for providers to receive policy guidance or reference materials, and answers to their questions.

Affected regulations: None.

j. Clarification of What Triggers the Written Notice Requirement

Summary of comments: Commenters requested that the Agencies clarify the specific types of services that would trigger the notice obligation, provide examples of situations in which the notice can be posted as opposed to provided individually to each beneficiary, and describe when the nature of services provided or exigent circumstances would impact a provider's duty to deliver the written notice or the timing of the delivery of the notice. These commenters requested more specificity regarding possible exceptions to a provider's obligation to provide a written notice to a beneficiary in advance of providing the services.

Response: The majority of the Agencies' NPRM preambles were specific regarding exceptions and timing for the written notice. See, *e.g.*, 80 FR at 47332–33 (DOL); 80 FR at 47288 (DHS). In addition, with respect to those Agencies whose NPRM preambles discussed a limited exception for when the written notice may be posted (as opposed to individually provided to each beneficiary), those Agencies believe that the language in their NPRM preambles is adequate to describe those exceptions with respect to their specific programs. As for the request by commenters to clarify what is meant by "the earliest available opportunity," the Agencies now clarify that "the earliest available opportunity" means the prompt provision of the notice, or provision of the notice as soon as reasonably practicable, after the services are provided. The Agencies are providing this clarification related to the timing of the delivery of the notice in this joint preamble, but the Agencies decline to include additional language in their final regulations. As noted above, these final regulations delay the date by which organizations will need to comply for 90 days to ensure sufficient time for providers to receive policy guidance or reference materials and answers to their questions.

Change: None.

Affected regulations: None.

2. Referrals

a. Burdens, Duties, and Liability of the Referring Organization

Summary of comments: Commenters were concerned that the beneficiary protections in the proposed regulations were inconsistent with the Federal Charitable Choice provisions (42 U.S.C. 290kk-1(f)(1); 42 U.S.C. 604a(e); 42 U.S.C. 300x-65(e)(1)) by requiring that faith-based organizations find alternative providers for beneficiaries, as opposed to placing this burden on the Government. Commenters asked that the Government provide assistance to organizations making referrals. Commenters said that the documentation requirement could be quite burdensome for providers and intermediaries, and that organizations do not have enough staff to facilitate referrals. Commenters also said that the estimate most Agencies provided for carrying out the referral requirement—no more than two hours of a provider's time—was without basis. Other commenters noted that concerns about additional costs and other concerns related to the referral requirement were misplaced, pointing to the history of the Substance Abuse and Mental Health Services Administration (SAMHSA) referral requirements. Commenters also said that faith-based organizations should be protected from liability for the actions of, or services provided by, alternative providers.

Response: The Agencies that are imposing beneficiary notice and referral requirements are aware of the burden that these requirements present. These Agencies believe, however, that the organizations required to make the referrals will generally be in the best position to identify alternative providers in reasonable geographic proximity and to make a successful referral of objecting beneficiaries to those alternative providers. In the event that an organization is unable to identify an alternative provider after a reasonable effort, the intermediary or Federal agency, as specified by agency-specific regulations, guidance, or other reference materials, will determine whether there is a suitable alternative provider to which the beneficiary can be referred. Under this process, the organization makes the initial effort, but if it is unable to identify an alternative provider, the burden shifts to the intermediary or the Agency (as applicable). The Agencies will provide additional directions, as needed, to organizations on whether they are responsible for the referral and when to contact an intermediary or the Agency in policy guidance or other reference materials. The Agencies are taking this approach due to the numerous differences among the programs administered by the Agencies. Agency-specific instructions will allow each Agency to tailor those instructions to the nature of the programs it administers.

The Agencies have sought to minimize the burden of the referral requirement to the greatest degree possible—while still fully implementing the Executive order—by limiting the referral requirement to "reasonable efforts" and providing assistance in cases where the faith-based organization is unable, on its own, to make a referral. As discussed in the Agencies' NPRM preambles or below, the Agencies believe that the number of requests for referrals will be minimal and that, on average, referrals will take no more than two hours. The Agencies' estimate of the number of referral requests faith-based organizations are likely to receive is based on SAMHSA's experience that its referral requirement has resulted in no requests for referrals that the Agencies know of to date. The Agencies now clarify that a provider need not spend more than approximately two hours of staff time in order to fulfill the "reasonable efforts" requirement. To be clear, the Agencies expect that much less staff time will be required to make a successful referral in most cases. Finally, the Agencies acknowledge that, in programs governed by the Charitable Choice provisions listed above, the statutes take precedence over these regulations, and the Government will continue to bear the full burden of making referrals as specified in those statutes.

As for the commenters' concern about the organizations' potential liability for the alternative providers' actions, these regulations are in no way intended to open the door to liability for faith-based organizations. Executive Order 13559 specifically notes that it "is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, Agencies, or entities, its officers, employees, or agents, or any other person." Executive Order 13559, § 2(d), 75 FR at 71323; see also Executive Order 13279, § 7, 67 FR at 77144.

Change: None.

Affected regulations: None.

b. Subjectivity of Beneficiary Objection

Summary of comments: In reference to the proposed regulations' requirement that faith-based organizations make reasonable efforts to refer a beneficiary who "objects to the religious character of the organization," commenters wrote that the term "object" is too subjective and open-ended. For example, at least one commenter suggested that the regulations may be ambiguous with respect to how specific a beneficiary's objection must be to trigger the referral requirement. Another commenter questioned why a beneficiary would need to object if a recipient of direct Federal financial assistance cannot impose a religious requirement on clients.

Response: The Agencies decline to modify the proposed regulations. In order for a beneficiary's objection to trigger the referral requirements under this rule, it must be reasonably clear under the circumstances that the beneficiary is objecting to the organization because of its religious character. While most of the Agencies have not required any specific format for a beneficiary objection, they have offered model forms that provide a way for beneficiaries to state their objections clearly. A faith-based organization concerned about misconstruing a beneficiary's objection may use the model forms for that purpose or may develop another form that meets the regulations' requirements. The Agencies will also provide additional directions to organizations in policy guidance or reference materials regarding beneficiary objections.

Regarding the question of why a beneficiary would need to object, a beneficiary may, for example, be uncomfortable with receiving services in a location with religious symbols or from a faith-based organization even when the service being provided is secular in nature. Therefore, consistent with the Executive order, the notice of beneficiary rights will provide an opportunity for the beneficiary to object to receiving services from the faith-based organization on the basis of its religious character, even in circumstances where the organization is conducting its services in accordance with these final regulations.

Change: None.

Affected regulations: None.

c. Referrals to Non-Government-Funded Providers

Summary of comments: Commenters recommended that if a referral to another Government-funded provider is not mandatory, the Agencies should clarify in regulations that a referral can be made to a non-Government-funded provider because such a referral is better than no referral at all. Some commenters requested that the final regulations make explicit that the organization's responsibility is limited to locating a nearby provider that is federally funded to provide the service. Some commenters recommended that the regulations should require that, when a provider refers a beneficiary to a non-Government-funded provider, the provider be required to provide a written notice to the beneficiary indicating whether the beneficiary foregoes any rights by attending the alternate provider.

Response: The referral requirement in the Agencies' final regulations does not specify the nature of the funding of the alternative provider; it specifies only that the referral must be made to an alternative provider to which the beneficiary or prospective beneficiary does not object on the basis of religious character. In addition, the referral must be to a provider that offers services similar in substance and quality to those offered by the faith-based organization, has the capacity to accept the beneficiary, and is in reasonable geographic proximity to the location where the beneficiary or prospective beneficiary is receiving or would receive services (except for services provided by telephone, Internet, or similar means). The referral may be to another religiously affiliated provider if the beneficiary has no objection to that provider, but if the beneficiary requests a secular provider and one is available, the referral must be to that provider. While the Agencies anticipate that in some geographic areas the only referral option may be to an organization that does not receive Federal funds, the Agencies believe that if a federally funded alternative provider meets the above requirements, a referral should generally be made to that provider.

The Agencies encourage faith-based organizations to provide information to beneficiaries about potential alternative providers. However, the Agencies decline to require organizations to provide beneficiaries with written information regarding alternative providers, because Executive Order 13559 does not require such notice and because this could impose an unwarranted burden on faith-based organizations.

Change: None except DOL, which is revising its referral regulations for reasons given in its agency-specific preamble (part IV.G.4.b.ii).

Affected regulations: 29 CFR 2.35(c) (DOL).

d. Qualifications of Alternative Provider

Summary of comments: Some commenters supported the requirements in the proposed regulations regarding the qualifications of the alternative providers, including the requirement that the alternative provider have the services or benefits that the beneficiary seeks and that are within the range of services of the referring program. Other commenters stated that it would be unreasonable to impose a duty on faith-based organizations to attest to the quality or to the equivalent value or capacity of potential alternative providers as this information would rarely be readily available to faith-based organizations. One commenter recommended that the awarding entity (*i.e.*, the Agency or intermediary) give a list of providers within the geographic area of the faith-based organization for the organization's use in the referral process.

Response: The Agencies generally decline to adopt the recommendations of the commenters. The Agencies recognize that an organization may not always be able to independently determine the relative substance and quality of services offered by an alternative provider. Nonetheless, if a referral is made, it must be to a provider that offers services similar in substance and quality to those offered by the organization. Under these final regulations, undertaking "reasonable efforts" to identify an alternative provider includes making a reasonable effort to ascertain the availability and services of an alternative provider. In its proposed and final regulations, USDA states that it may require the awarding entity to give the faith-based organization information about alternative providers in some cases. 7 CFR 16.4(g)(4). The rest of the Agencies, however, decline to adopt similar regulations because those Agencies believe that such a referral list could become outdated before it is used, and because the Agencies estimate that the number of referrals requested will be minimal. Those Agencies may address the use of such a referral list on a program-by-program basis.

Change: None.

Affected regulations: None.

e. Conditional Referral and Reasonable Efforts

Summary of comments: Commenters requested that the Agencies require a referral rather than mandating "reasonable efforts" in providing a referral. Some Agencies also received a request to define what constitutes "reasonable efforts" in referring a beneficiary to an alternative provider.

Response: The Agencies decline to adopt the recommendations of the commenters. The Agencies believe that, in some cases, due to the location of the organization, availability of resources, the nature of the program, or other factors, a referral option may not be available. Therefore, the Agencies are requiring only that the organization make "reasonable efforts" to find an alternative provider. However, the Agencies believe that in most cases the organization, alone or with the assistance of the intermediary or Agency, will be able to find an alternative provider. As for providing a definition of the term, what constitutes "reasonable efforts" will depend on the circumstances. As noted above, the organization should at a minimum attempt to identify an alternative provider, determine what services the alternative provider offers, and determine whether the alternative provider is accepting new referrals. The Agencies will provide further policy guidance or reference materials for organizations so they can better understand their duties under the regulations.

Change: None.

Affected regulations: None.

f. Process for Determining Whether a Beneficiary Has Contacted the Alternative Provider

Summary of comments: Commenters requested that the regulations include a process for faith-based organizations to determine whether a beneficiary has contacted the alternative provider. Commenters also requested that the regulations require organizations and intermediaries to maintain records regarding requests for alternative providers, including records of where the individual was referred, and provide such records to the Agency. Commenters emphasized that completing such a process and maintaining relevant records will ensure that faith-based organizations comply with the requirement to make reasonable efforts to refer beneficiaries to alternative providers. Commenters also recommended that the Agencies track how many beneficiaries request alternative providers, how many actually use an alternative provider, how many do not use any services, how many are not provided an alternative provider, and whether there are problems within the reporting procedures.

Response: The Agencies agree that maintaining records of referrals is important. Each Agency will ensure that grantees are complying with the Executive order and implementing regulations, including maintaining records of referrals. However, the Agencies believe that maintaining records of referrals is not the only way to ensure compliance; the Agencies are also ensuring compliance through training and oversight. While maintaining records of referrals will help provide information about how many referrals are made and requested, the Agencies are not requiring recipients to follow up with each individual to determine if the services are used. Agency oversight will also identify any problems with the reporting procedures so that Agencies can handle such problems when they arise. This issue is covered in more detail under part III.F (Monitoring) and in some agency-specific preambles, including in some agency-specific Paperwork Reduction Act sections. It will also be covered in subsequent policy guidance or reference materials.

Change: DHS in its proposed regulation required recipients to notify DHS of successful and unsuccessful referrals but has edited the language in its final regulations to clarify (1) that the recipient need only notify DHS (or an intermediate awarding entity) of unsuccessful referrals but (2) that the recipient must keep a record of both successful and unsuccessful referrals. HUD and HHS did not explicitly require grantees to maintain a record when they made a referral in their proposed regulations and have added such a requirement to their final regulations.

Affected regulations: 6 CFR 19.7(d) (DHS); 24 CFR 5.109(g)(4) (HUD); 24 CFR 87.3(k) (HHS).

g. Notification of Government and Timeframe of Referral

Summary of comments: Commenters recommended that the regulations require organizations to notify both the Agency and any intermediary of each referral to an alternative provider. Another commenter suggested that, at a minimum, Agencies should require the intermediary to report the referral to the Agency upon receiving notice by the organization making the referral. One commenter supported the proposal that an organization be required to report to its awarding Agency whenever the organization cannot identify an alternative provider. The commenter suggested that the reporting requirement include a specific timeframe, such as promptly notifying the awarding Agency of every referral request.

Response: Pursuant to these final regulations, when an organization makes a referral to an alternative provider, the organization must maintain a record of the referral. Therefore, requiring the organization to report the referral to the Agency or intermediary would be redundant given the paperwork that must already be retained by the organization, which is subject to review by the Agency or intermediary. The Agencies already have processes in place to monitor grantees and ensure compliance with regulatory requirements at regular intervals. However, prompt reporting to the awarding Agency or intermediary is needed in situations where the organization has determined that it is unable to identify an alternative provider. Without prompt reporting, an awarding Agency or intermediary might be unable to determine whether a referral can be made to a suitable provider. Therefore, the Agencies have clarified in their regulations, if their regulations did not already contain language to this effect, that when an organization is unable to identify a referral after reasonable efforts, the organization will be required to "promptly" report that fact to the Agency or intermediary.

Change: The final regulations make clear that an organization that cannot make a referral must report that fact promptly to the intermediary or Agency.

Affected regulations: 6 CFR 19.7(d) (DHS); 7 CFR 16.4(g)(3) (USDA); 24 CFR 5.109(g) (HUD); 28 CFR 38.6(d)(4) (DOJ); 29 CFR 2.35(d) (DOL); 34 CFR 75.713(d), 34 CFR 76.713(d) (ED); 38 CFR 50.3(d) (VA); 45 CFR 87.3(k) (HHS).

h. Clarification of Who Is Responsible for Making the Referral

Summary of comments: Many of the Agencies' proposed regulations stated that if a faith-based organization cannot locate an alternative provider, the Agency (or intermediary) "shall determine whether there is any other suitable alternative provider to which the beneficiary may be referred." See proposed regulations at 80 FR at 47298 (6 CFR 19.7(d)) (DHS); 80 FR at 47252 (7 CFR 16.4(g)(4)) (USDA); 80 FR at 47311 (24 CFR 5.109(g)(3)(iv)) (HUD); 80 FR at 47325 (28 CFR 38.6(d)(4)) (DOJ); 80 FR at 47338 (29 CFR 2.35(d)) (DOL); 80 FR at 47346 (38 CFR 50.3(d)) (VA). Those proposed regulations also stated that "[a]n intermediary that receives a request for assistance in identifying an alternative provider may request assistance" from the Agency. See proposed regulations at 80 FR at 47298 (6 CFR 19.7(d)) (DHS); 80 FR at 47252 (7 CFR 16.4(g)(4)) (USDA); 80 FR at 47311 (24 CFR 5.109(g)(3)(iv)) (HUD); 80 FR at 47325 (28 CFR 38.6(d)(4)) (DOJ);

80 FR at 47338 (29 CFR 2.35(d)) (DOL); 80 FR at 47346 (38 CFR 50.3(d)) (VA). Commenters noted that under some of the Agencies' proposed regulations, the process required for responding to a beneficiary's request for an alternative provider was not clear. One commenter wrote that the language implied that when an intermediary is involved, the intermediary—rather than the Agency—is ultimately responsible for identifying the alternative provider.

Response: The role of the intermediary may vary depending upon the Agency that made the award to the intermediary and the program under which the award was made. Most Agencies have provided that the intermediary, the Agency, or both will be available to assist the organization in finding an alternative provider. See final regulations at 6 CFR 19.7(d) (DHS); 7 CFR 16.4(g)(3) (USDA); 24 CFR 5.109(g)(3)(iv) (HUD); 28 CFR 38.6(d)(4) (DOJ); 29 CFR 2.35(d), (e) (DOL); 34 CFR 75.713(d)(2), 76.713(d)(2) (ED); 38 CFR 50.3(d) (VA). Some Agencies have determined that the intermediary should have the primary responsibility to help whenever the provider cannot locate an alternative provider, consistent with the policy that the intermediary is responsible for working directly with subrecipients, but also provide in their regulations that the intermediary may ask for assistance from the Agency or that the Agency will determine if a placement can be made when the intermediary cannot make one. See final regulations at 7 CFR 16.4(g)(3) (USDA); 24 CFR 5.109(g)(3)(iv) (HUD); 28 CFR 38.6(d)(4) (DOJ); 29 CFR 2.35(d), (e) (DOL); 34 CFR 75.713(d)(2), 76.713(d)(2) (ED). The Agencies believe that these regulations are sufficiently clear to delineate Agency and intermediary responsibilities, but will consider providing policy guidance or reference materials to clarify further.

Change: None.

Affected regulations: None.

E. Political or Religious Affiliation

1. Merit-Based Decisions

Summary of comments: Several commenters requested that Agencies provide language in the final regulations to ensure that merit-based decisions include considerations of whether an organization will serve all beneficiaries and perform all services that are necessary to fulfill program objectives. Some commenters urged the Agencies to specifically limit funding awards to entities that can accomplish program goals. The commenters argued that requiring an organization to include a list of services the organization would or would not provide would afford the Agency a full understanding of the particular services an entity (or its subcontractors) will or will not provide. Commenters stated that, as a result, Agencies would make better funding decisions and protect beneficiaries from being denied needed services. In addition, one commenter recommended that the final regulations be revised to clarify that it would not constitute religious discrimination for the Government to prioritize contracting with entities that are willing to meet the full scope of the contract.

Response: The Agencies believe that specifically limiting funding awards in this way is beyond the scope of Executive Order 13559. Therefore, the Agencies do not make any changes to the proposed regulations based on these comments.

Change: None.

Affected regulations: None.

2. Access to Federal Funding

Summary of comments: One commenter recommended revising the regulations that state that decisions about awards of Federal financial assistance must be free from political interference or even the appearance of such interference and those decisions must be made on the basis of merit, rather than religion or religious belief. The commenter noted that certain laws may in fact require an Agency to treat secular and faith-based organizations differently when making funding decisions. Therefore, the commenter suggested adding language to this provision to the effect of "to the extent permitted by authorizing legislation."

Response: The Agencies agree that these final regulations may require different outcomes than those specified in program- or agency-specific statutes. However, standard rules of statutory and regulatory construction require that when there is a conflict between a Federal statute and regulations, the statute determines the outcome of the conflict. Thus, there is no need to include the language recommended by the commenter. When an Agency has identified that a Federal statute applicable to a particular Agency or program conflicts with these regulations, the Agency will discuss that issue in that Agency's agency-specific section of this preamble.

Change: None.

Affected regulations: None.

3. Political Influence

Summary of comments: Several commenters stated that the proposed regulations regarding the selection of non-Federal entities for Federal financial assistance are biased against religion because they presume that any pressure to influence funding would be done to favor religion or religious belief. These commenters asserted that they thought it just as likely that any political pressure will be antireligious or hostile to a particular religion. The commenters recommended revising the proposed regulations to provide that decisions about the award of Federal financial assistance must be free from political interference or even the appearance of such interference and must be made on the basis of merit, not on the basis of prejudice *for or against* religion or religious belief. Alternatively, the commenters proposed adding language to make clear that faith-based organizations are eligible, on the same basis as any other organization, to participate in any Agency program for which they are otherwise eligible. These commenters recommended that neither the Agencies nor any State or local government receiving Federal financial assistance should be permitted to discriminate in favor of or against an organization on the basis of the organization's religious character or affiliation.

Response: Some of the proposed regulations did not completely track the language of the Executive order regarding the prohibition against considering religion or religious beliefs, and the instruction to guard against political influence, in selecting recipients of Federal financial assistance. The Agencies agree with the commenters that the final regulations should clearly state that political bias or appearance of bias, or the consideration of an organization's religious affiliation or lack thereof, is prohibited in the selection of non-Federal entities for Federal financial assistance.

Change: The final Agency regulations now include language that more closely follows the Executive order in this regard, which states that "[d]ecisions about awards of Federal financial assistance must be free from political interference or even the appearance of such interference and must be made on the basis of merit, not on the basis of the religious affiliation of a recipient organization or lack thereof." Executive Order 13279, § 2(j), as amended by Executive Order 13559, § 1(b), 75 FR at 71321. Because the context of this requirement is different for each Agency, the Agencies that are making changes discuss in their agency-specific sections of this preamble how each agency's regulations make clear that Agencies are prohibited from considering the religious affiliation, or lack thereof, of a non-Federal entity in awarding Federal financial assistance.

Affected regulations: 2 CFR 3474.15(b)(2), 34 CFR 75.52(a)(2), 76.52(a)(2) (ED); 7 CFR 16.3(a) (USDA); 22 CFR 205.1(j) (USAID); 24 CFR 5.109(c) (HUD); 28 CFR 38.4(b) (DOJ); 29 CFR 2.39 (DOL); 38 CFR 50.4 (VA).

F. Monitoring

Summary of comments: Several commenters suggested that the regulations be changed to "[i]mprov[e] monitoring of constitutional, statutory, and regulatory requirements that accompany federal social service funds." Specifically, several commenters asked that the proposed regulations be revised to mandate specific assurances of compliance, as well as specific monitoring and enforcement requirements. One commenter noted that only DOJ had included proposed regulations regarding monitoring for compliance, see proposed regulations at 80 FR at 47325 (28 CFR 38.8) (DOJ), and asked that other Agencies include these provisions, too. A commenter also noted with approval that DOJ's proposed regulations would require organizations to sign assurances that they would comply with the regulations. See proposed regulations at id. (28 CFR 38.7) (DOJ). Several commenters recommended that the other Agencies include assurance requirements in their regulations as well. One commenter recommended that the Agencies include language in the preamble to the final regulations describing the process by which Agencies would require affirmative assurances from awardees that the awardees will comply with the regulations and the ways the regulations would be enforced. These commenters asked that each Agency that elected not to require a separate assurance of compliance as part of these regulations add in its general assurances a citation to these regulations. One commenter also recommended that the other Agencies follow DOJ's proposed enforcement procedures by designating a specific office to enforce the regulations.

Response: The Agencies agree that they must guard against inappropriate uses of Federal financial assistance by monitoring and enforcing all constitutional, statutory, and regulatory standards governing such assistance. Executive Order 13559 amended Executive Order 13279 to describe Federal agencies' specific obligations to monitor and enforce constitutional, statutory, and regulatory requirements regarding religion-related issues, requiring that the Federal Government implement Federal programs in accordance with the Establishment Clause and the Free Exercise Clause of the First Amendment to the United States Constitution and other applicable law. The Executive order also provided that Federal agencies must monitor and enforce standards regarding the relationship between religion and government in ways that avoid excessive entanglement between religious bodies and governmental entities. Executive Order 13279, § 2(e), as amended by Executive Order 13559, § 1(b), 75 FR at 71320.

The Agencies agree with the commenters that they must vigorously monitor and enforce applicable regulations in this regard. However, certain Agencies are constrained by statutes, resources, or both from establishing a central office to monitor and enforce compliance with the requirements in these final regulations. Therefore, the Agencies have concluded that each Agency needs to maximize its resources to ensure that recipients comply with these final regulations in a manner consistent with the Agency's statutes, other regulations, and structure. Because each Agency has a unique structure and statutory enforcement requirements, each Agency describes in its agency-specific preamble, or will describe in its policy guidance or reference materials, how its offices will ensure compliance with these final regulations.

As stated in its regulations, DOJ will require specific assurances from all organizations that they will comply with the final regulations. See proposed regulations at 80 FR at 47325 (28 CFR 38.7(a)) and final regulations at 28 CFR 38.7(a). Several commenters recommended that the other Agencies adopt similar regulations. However, many Agencies already collect the information needed to assure that their grantees and subgrantees comply with all Federal requirements applicable to their grant programs, including the new requirements established in these final regulations. For example, many Agencies require applicants to provide certain standard assurances in the Standard Form 424 (SF–424), see, *e.g.,* 45 CFR 75.206 (HHS), including the commenter's proposed assurance that the applicant "will comply with all applicable requirements of all other Federal laws, executive orders, regulations[,] and policies governing this program"; SF–424B (Assurances for Non-Construction Programs) and SF–424D (Assurances for Construction Programs), both available at *http://www.grants.gov/web/grants/forms/sf-424-family.html#sortby=1.* Agencies that rely on existing assurances do not wish to burden organizations, including faith-based organizations, with an additional assurance of compliance.

The Agencies do agree that organizations that receive direct Federal financial assistance need to be aware of these new requirements and have meaningful guidance from the Agencies to assist them in complying with the requirements. As already noted, the Agencies will provide training and policy guidance or other reference materials to grantees to effectively implement these final regulations. To ensure that the Agencies meet this objective, each Agency is devoting substantial resources to ensure that its program staff understand their responsibilities to ensure that grantees, subgrantees, and contractors that provide social services to beneficiaries under programs of direct Federal financial assistance comply with these final regulations. Given the substantial work needed to make sure that all grantees, intermediaries, and subgrantees understand what they must do under these final regulations, the Agencies have decided to delay the date by which recipients of Federal financial assistance must comply with these final regulations beyond the standard 30 days. These final regulations will become effective in 30 days. However, the Agencies have decided to delay the compliance date for 90 days, as discussed in other parts of this preamble.

Change: None except HUD, which is changing its regulations as explained in its agency-specific preamble (part IV.E.6).

Affected regulations: 24 CFR 5.109(g)(4) (HUD).

G. Other Issues

1. Nondiscrimination in Employment Decisions/Religious Freedom Restoration Act

Summary of comments: Several commenters requested that the proposed regulations be modified to expressly prohibit employment discrimination on the basis of religion by recipients of Federal financial assistance, including faith-based organizations. Commenters also stated that the exemption from the Federal prohibition on employment discrimination on the basis of religion, set forth in section 702(a) of the Civil Rights Act of 1964, 42 U.S.C. 2000e–1(a) (Title VII exemption), applies only to wholly privately funded faith-based organizations, not religious organizations that receive Federal financial assistance. Other commenters requested that the final regulations make clear that faith-based organizations that receive such assistance do not lose the ability to make employment decisions on the basis of religion. Some commenters further requested a preclearance process whereby a faith-based organization subject to a particular statutory employment nondiscrimination requirement could apply to the Agency for a decision on whether the Religious Freedom Restoration Act (RFRA), 42 U.S.C. 2000bb through 2000bb–4, exempts the organization from that statutory requirement.

Response: The Agencies decline to adopt the commenters' recommendations. Executive Order 13559 does not address employment issues, and thus, in general, the Agencies did not address these issues through proposed new regulations or alterations of existing regulations.[16]

Change: None.

Affected regulations: None.

2. Reinforcement of Other Nondiscrimination Protections

Summary of comments: Commenters recommended that these regulations should reinforce that federally funded programs must comply with other existing protections that prohibit discrimination on the basis of race, color, national origin, sex, disability, or age.

Response: These final regulations address discrimination against beneficiaries on the basis of religion, a religious belief, a refusal to hold a religious belief, or a refusal to attend or participate in a religious practice. The Agencies agree that grantees must comply with all other anti-discrimination laws, regulations, and terms and conditions that are applicable to their awards. Yet, those existing protections are outside the scope of the Executive order, and the Agencies therefore decline to adopt this recommended change. These regulations only implement Executive Orders 13279 and 13559 and do not modify or interpret other applicable statutory or regulatory provisions addressing discrimination on the basis of religion.

Change: None.

Affected regulations: None.

3. Applicability to Sub-Awards, Including Contracts

Summary of comments: Commenters argued that the clause in each Agency's proposed regulations prohibiting grantees from discriminating against beneficiaries on the basis of their religion or religious belief should apply to any subrecipient of a grantee, including a contractor of a grantee or subrecipient, in addition to the grantee.

Response: The clause in each Agency's regulations that prohibits grantees from discriminating against a program beneficiary or prospective beneficiary on the basis of religion, a religious belief, a refusal to hold a religious belief, or a refusal to attend or participate in a religious practice applies to any subrecipient in addition to the grantee itself. ED included specific proposed regulations to reinforce this requirement. See final regulations at 2 CFR 3474.15(f). However, the other Agencies do not believe that they need to revise their final regulations to enforce this requirement because recipients of Federal financial assistance are required to ensure that their contractors comply with all applicable requirements, including the requirements in these final regulations and the Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards (Uniform Guidance) that was adopted by the Agencies on December 19, 2014. See 79 FR 75867. Specifically, 2 CFR 200.318(b) requires that non-Federal entities maintain oversight to ensure that contractors perform in accordance with the terms, conditions, and specifications of their contracts or purchase orders. Non-Federal entities must include conditions in their contracts with every organization that provides services to beneficiaries to ensure that the contractor complies with all regulations applicable to the contract, including the requirements in these final regulations.

Change: None.

Affected regulations: None.

4. Definitions for "Social Service Program" and "Federal Financial Assistance"

Summary of comments: Commenters recommended that the regulations of the Agencies, including USAID, should, in some instances, define "social service program" as well as "Federal financial assistance." Both definitions first appeared in section 1 of the original Executive Order 13279. Commenters felt that the definitions were needed in the regulations to determine which Government programs are subject to Executive Order 13279 as amended by Executive Order 13559.

Response: When identifying "social service programs" to which these regulations apply, the Agencies are guided by the definition in section 1 of Executive Order 13279, as well as the relevant case law interpreting the Establishment Clause and the Free Exercise Clause of the First Amendment to the U.S. Constitution. The Agencies believe it is not feasible to develop a definition of "social service programs" that contemplates and addresses the array of programs to which these final regulations apply. For example, HUD generally applies its regulations to all programs that it administers, including programs in which HUD awards Federal financial assistance through contracts, grants, and cooperative agreements. See, *e.g.*, existing regulations at 24 CFR 5.109(a). Therefore, each Agency has either addressed this matter in its agency-specific preamble or will address this matter through forthcoming policy guidance or reference materials.

Change: None.

Affected regulations: None.

5. Display of Religious Symbols

Summary of comments: Commenters requested a requirement that religious symbols be removed at the time and location where federally funded services are offered because beneficiaries of federally funded services will otherwise understand the retention of religious symbols as government endorsement of religion. Commenters argued that requiring or encouraging individuals to encounter religious symbols in order to receive government services is unconstitutional. They also stated that beneficiaries should not be forced to accept much-needed services in an environment that makes them feel unwelcomed or pressured. One commenter also cited a study finding that religious symbols can measurably affect behavior, even when displayed with no intent to proselytize or persuade.

Response: The Executive order provides that "faith-based organizations that receive Federal financial assistance may use their facilities to provide social services supported with Federal financial assistance, without removing or altering religious art, icons, scriptures, or other symbols from these facilities." Executive Order 13279,

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[16] As noted in its 2015 Supplemental Notice of Proposed Rulemaking ("SNPRM") and discussed further in its agency-specific preamble in part IV.B of this preamble, DHS initially proposed regulations in January 2008 to implement Executive Order 13279. DHS's 2015 proposed regulations included an employment provision that is consistent with its 2008 NPRM and the other Agencies' current regulations on these matters. Compare proposed regulations at 80 FR at 47298 (6 CFR 19.9) (DHS), with, *e.g.*, existing regulations at 28 CFR 38.2(f) (DOJ), and final regulations at 28 CFR 38.5(e) (DOJ). As noted elsewhere in this preamble, the scope of DHS's 2015 proposed regulations was broader than the scope of the other Agencies' proposals to amend their existing rules. In consideration of the importance of uniformity among Federal agencies on these matters, DHS has declined to make further changes related to employment.

§ 2(g), as amended by Executive Order 13559, § 1(b), 75 FR at 71320. The Agencies are satisfied that this provision is constitutional and believe that it is consistent with Federal statutes that affirm this principle (see, *e.g.*, 42 U.S.C. 290kk–1(d)(2)(B)) and the general practice of Agencies that do not otherwise limit art or symbols that recipients of Federal financial assistance may display in the structures where agency-funded activities are conducted. While the Agencies decline to adopt the recommendation to depart from the Executive order by prohibiting the display of religious symbols in buildings where federally funded programs are conducted, these regulations introduce a process whereby beneficiaries seeking services funded by direct, domestic Federal financial assistance may object to an organization's religious character and seek referral to an alternative provider.

Change: None.

Affected regulations: None.

6. Eligibility of Faith-Based Organizations To Receive Federal Funding

Summary of comments: Some commenters objected to the Federal Government making any financial assistance available to faith-based organizations because they believe that such assistance violates the Establishment Clause. Other commenters were concerned that making funds available to faith-based organizations would involve entanglement between church and state. Several of the commenters were concerned that the receipt of Federal funds by faith-based organizations would result in Federal funds being used to promote religion, coerce beneficiaries, or discriminate against beneficiaries who do not hold the same beliefs as the faith-based organizations. Other commenters were concerned that making funds available to faith-based organizations would divert Federal funds toward religion and result in support of religious education.

Response: These final regulations do not violate constitutional principles of separation of church and state. The Supreme Court has determined that the Establishment Clause does not prohibit faith-based organizations from receiving government funds under appropriate conditions, see, *e.g.*, *Bowen* v. *Kendrick*, 487 U.S. 589 (1988); *Zelman* v. *Simmons-Harris*, 536 U.S. 639 (2002), but at the same time has cautioned that "[a]id normally may be thought to have a primary effect of advancing religion . . . when it funds a specifically religious activity in an otherwise substantially secular setting," *Hunt* v. *McNair*, 413 U.S. 734, 743 (1973). The regulations heed both these principles by permitting faith-based organizations to receive funds to participate in social service programs while providing that direct Federal financial assistance may not be used to pay for "explicitly religious activities" such as religious instruction, devotional exercises, worship, or proselytization. Furthermore, replacing "inherently religious activities" with the term "explicitly religious activities" provides greater clarity about the separation of activities funded by direct Federal financial assistance from religious activities and more closely matches constitutional standards as they have developed in case law. Because the regulations would require that grant services be offered separately in time or place from explicitly religious activities, no faith-based organization would be allowed to use Federal funds to promote religion or coerce beneficiaries, and there would be no entanglement of church and state in providing needed services to beneficiaries. In these instances, the Government does not encourage or promote any explicitly religious activities.

Finally, under the current regulations established under Executive Order 13279 (*i.e.*, those preexisting this rulemaking), organizations receiving Federal financial assistance are prohibited from discriminating against beneficiaries based on religion or religious belief. See final regulations at 7 CFR 16.3(a) (USDA); 22 CFR 205.1(e) (USAID); 24 CFR 5.109(h) (HUD); 28 CFR 38.1(d) (DOJ); 29 CFR 2.33(a) (DOL); 34 CFR 75.52(e), 76.52(e) (ED); 38 CFR 61.64(e), 62.62(e) (VA); 45 CFR 87.2(e) (HHS). This regulatory requirement is incorporated into the conditions that apply to every Federal award. Thus, an organization that receives Federal financial assistance and that discriminates against a beneficiary would be violating the terms and conditions of its grant and rendering its grant subject to termination by the funding Agency. In addition, the final regulations require faith-based organizations that receive domestic direct Federal financial assistance to notify beneficiaries that those organizations may not discriminate against beneficiaries on the basis of religion, religious belief, a refusal to hold a religious belief, or a refusal to attend or participate in a religious practice. See final regulations at 6 CFR 19.6(a)(1) (DHS); 7 CFR 16.4(f)(1)(i) (USDA); 24 CFR 5.109(g)(1)(i) (HUD); 28 CFR 38.6(c)(1)(i) (DOJ); 29 CFR 2.34(a)(1) (DOL); 34 CFR 75.712(a)(1), 76.712(a)(1) (ED); 38 CFR 50.2(a)(1) (VA); 45 CFR 87.3(i)(1)(a) (HHS). Thus, beneficiaries will have the information they need to protect themselves from discrimination based on religion or religious belief.

Based on these considerations, the Agencies decline to make any changes to the proposed regulations regarding the eligibility of faith-based organizations to receive grants under Federal social service assistance programs.

Change: None.

Affected regulations: None.

7. Training Requirements

Summary of comments: Commenters argued that proper and regular training of Agency employees will be necessary to ensure that these regulatory requirements are understood and implemented. They recommended that the Agencies commit, through these final regulations, to provide training at least once every 2 years. The commenters argued that without including a commitment to regular training in these regulations, there is no assurance that training will continue in the future. Similarly, one commenter relayed the commenter's understanding that the White House Office of Faith-Based and Neighborhood Partnerships would urge the Agencies to hold trainings on the new regulations, but the commenter suggested that the written regulations should include a commitment by the Agencies to do so on at least a biennial basis.

Response: Executive Order 13559 specifically tasked the Working Group with addressing training on these requirements for Government employees and employees of recipients of Federal financial assistance. See Executive Order 13279, § 3(b)(viii), as amended by Executive Order 13559, § 1(c). In the *Report to the President: Recommendations of the Interagency Working Group on Faith-Based and Other Neighborhood Partnerships*, dated April 2012, available at *https://www.whitehouse.gov/sites/default/files/uploads/finalfaithbasedworkinggroupreport.pdf*, the Working Group recommended that training be addressed in the non-regulatory guidance. Id. at 6, 27–29. The Agencies recognize the importance of proper training in assuring implementation and ongoing compliance with these requirements but do not agree that training requirements must be addressed through regulations. Rather, the Agencies intend to issue policy guidance or reference materials that will assist recipients, and adopt policies that will address the manner and frequency by which each Agency will carry out training sessions for Agency staff and external stakeholders.

Change: None.

Affected regulations: None.

IV. Agency-Specific Issues and Certifications

A. Department of Education

ED received comments on its proposed regulations from 93 parties. As reflected below, unless otherwise specified, all comments received by ED are addressed fully in the discussion of cross-cutting issues in part III of this preamble, and those responses are adopted by ED. Some of the cross-cutting comments addressed in part III of the preamble were not received by ED and ED concurs in the part III resolution of those comments unless specifically noted either in part III or this agency-specific part IV.A of the preamble.

ED addresses in this part of the preamble the ED-specific comments not addressed in part III of the preamble and provide ED-specific findings and certifications. ED does not discuss in this part of the preamble minor or technical changes that were made to provide greater consistency or simplify the language in the regulations.

This agency-specific discussion has the same organization as part III of the preamble, outlined as follows:

1. Prohibited Use of Direct Federal Financial Assistance
2. Direct and Indirect Federal Financial Assistance
3. Intermediaries
4. Protections for Beneficiaries
   a. Beneficiary Notice
   b. Referrals
5. Political or Religious Affiliation
6. Monitoring
7. Other issues
   a. Nondiscrimination in Employment Decisions/RFRA
   b. Reinforcement of Other Non-Discrimination Protections
   c. Existing Anti-Discrimination Laws (*e.g.,* Race, Color And National Origin)
   d. Definitions for "Social Service Program" and "Federal Financial Assistance"
   e. Display of Religious Symbols
   f. Eligibility of Faith-Based Organizations To Receive Federal Funds
   g. Training Requirements
8. ED Findings and Certifications

If ED does not need to address a comment outlined above, ED notes "Covered in part III of this preamble."

1. Prohibited Use of Direct Federal Financial Assistance

With the exception of the response to the comments regarding chaplaincy and similar services, ED adopts the responses in the cross-cutting section of the preamble related to prohibited uses of direct Federal financial assistance. Regarding chaplaincy and similar services, ED agrees that those services should not be subject to direct Federal financial assistance restrictions and, therefore, are not subject to the requirements in the final regulations regarding separation of time or place and the notice and referral requirements. ED, however, declines to include language in its final regulations regarding chaplaincy and similar services because it has no programs that fund such services.

2. Direct and Indirect Federal Financial Assistance

Consistent with the discussion in part III, the provision in ED's final regulations prohibiting discrimination against beneficiaries on the basis of religion, religious belief, a refusal to hold a religious belief, or refusal to attend or participate in a religious practice applies to all private organizations receiving ED funds under program of direct Federal financial assistance, regardless of whether they received direct or indirect financial assistance. See 2 CFR 3474.15(f), 34 CFR 75.52(e), 76.52(e).

ED adopts the response in part III to comments regarding the distinction between direct and indirect Federal financial assistance. ED notes, however, that since ED published the NPRM there has been one significant change related to this topic. Specifically, in the NPRM ED stated that ED had two programs that provided "indirect Federal financial assistance," as defined in the proposed regulations. One of those exceptions involved supplemental educational services (SES). ED indicated that in most cases an SES provider that contracts with a local educational agency (LEA) pursuant to section 1116 of title I, part A of the Elementary and Secondary Education Act of 1965 (ESEA), as amended by the No Child Left Behind Act of 2001, would be providing services under a program supported only by "indirect Federal financial assistance" because, by statute, the government program is neutral toward religion and it is the parents who choose from among approved providers of SES. However, on December 10, 2015, the President signed into law the Every Student Succeeds Act (ESSA), Pub. L. 114–95, which reauthorizes the ESEA. Among the changes to the ESEA under the ESSA, ED notes that LEAs will no longer be required to provide SES, starting in Federal fiscal year 2017. The other exception discussed in the NPRM, the District of Columbia School Choice Incentive Program (DC Choice Program), is unaffected by the ESSA and will continue to provide indirect Federal financial assistance. As noted in the NPRM, the DC Choice program is subject to statutory nondiscrimination requirements not included in these final regulations.

3. Intermediaries

Except as required in these final regulations, ED does not use the term "intermediaries" in its regulations, but it does administer programs that provide assistance through pass-through entities that act as intermediaries. ED's pass-through entities are States that administer programs under the regulations that apply only to State-administered programs. See 34 CFR part 76. A few of ED's discretionary grant programs also authorize grantees to award subgrants and those programs are subject to ED's grant administration regulations in 34 CFR part 75. The regulations in parts 75 and 76 describe the different responsibilities that States and other grantees that are authorized to award subgrants have regarding the subgrants they award. ED also notes that in cases where a subgrantee awards a contract to a faith-based organization to provide program services under a program of direct Federal financial assistance, the subgrantee acts as an intermediary of the faith-based contractor. See 2 CFR 3474.15; 34 CFR 76.52, 76.712–76.714.

4. Protections for Beneficiaries

a. Beneficiary Notice

i. Written Notice Requirement for Providers That Receive Indirect Federal Financial Assistance

This issue was addressed in part III of the preamble. In addition, ED made edits to the regulations requiring faith-based organizations to provide the notice specified in appendix A to 24 CFR part 75. These changes clarify that a faith-based organization that provides program services to beneficiaries under an ED program of direct Federal financial assistance may do so under a contract, as well as under a grant or subgrant. Regardless of whether the program services are provided under a contract, grant, or subgrant, faith-based organizations have the same responsibilities to give notice to beneficiaries of their rights.

ii. Written Notice Language

ED's final regulations include changes to the proposed regulations regarding the notice that faith-based organizations must provide beneficiaries. As described in part III of this preamble, ED has amended the prohibition against private organizations discriminating against beneficiaries based on their religion or religious belief to add a prohibition against discrimination based on a refusal to hold a religious belief, or refusal to attend or participate in a religious practice. See 2 CFR 3474.15(c)(1), (f); 34 CFR 75.52(e), 75.712(a)(1); 34 CFR part 75, appendix A, paragraph (1); 34 CFR 76.52(e), 76.712(a)(1). The Department has also made edits to the form in appendix A so the faith-based organization can identify the non-Federal entity that made the award to the organization.

iii. Reporting Violations of the Protections in the Written Notice

Consistent with the discussion in part III of this preamble, ED has made changes to the language regarding the rights of beneficiaries and in the notice that must be provided to beneficiaries under a direct Federal financial assistance program. The notice now specifically informs beneficiaries that they have a right to file a complaint regarding any denials of services or benefits. See 34 CFR 75.712(a)(5), appendix A to part 75, paragraph (5), and 76.712(a)(5).

iv. Guarantee of Referral in the Written Notice

Covered in part III of this preamble.

v. Accessibility of the Written Notice

Covered in part III of this preamble.

vi. Services Not Provided and Prioritization of the Written Notice

Covered in part III of this preamble.

vii. Written Notice and Referral Forms

Covered in part III of this preamble.

viii. Burden of Written Notice

Covered in part III of this preamble.

ix. Phase-In of Written Notice

Covered in part III of this preamble.

x. Clarification of What Triggers the Written Notice Requirement

Covered in part III of this preamble.

b. Referrals

i. Burdens, Duties, and Liability of the Referring Organization

Covered in part III of this preamble.

ii. Subjectivity of Beneficiary Objection

As discussed in part III of this preamble, one commenter was concerned that at least one agency did not clearly indicate when a faith-based organization had a duty to make reasonable efforts to refer a beneficiary to an alternative provider. ED notes that its final regulations include a notice, specified in appendix A, that faith-based organizations are required to use and that notice includes a check box for a beneficiary to object to the religious character of the organization. When that notice is returned with the objection box checked, a faith-based organization's duty to make reasonable efforts to refer a beneficiary to an alternative provider will be clear.

iii. Referrals to Non-Government Funded Providers

Covered in part III of this preamble.

iv. Qualifications of Alternative Provider

Covered in part III of this preamble.

v. Conditional Referral and Reasonable Efforts

Covered in part III of this preamble.

vi. Process for Determining Whether a Beneficiary Has Contacted the Alternative Provider

The form included as appendix A to part 75 specifically gives beneficiaries three options. The beneficiary can ask the faith-based organization to do one of the following: (1) Follow up with the beneficiary, providing a name and contact information; (2) follow up with the alternative service provider; or (3) not follow up. The policy guidance ED is developing to assist faith-based organizations in complying with the final regulations will emphasize the organizations' responsibility to comply with the wishes stated on the form.

ED noted in the preamble to its proposed regulations that ED had regulations outside its proposed regulations that required its grantees and subgrantees to maintain records regarding all activities related to the projects and programs they administer. See 2 CFR 200.333, 3474.1; 34 CFR 75.731, 76.731. Therefore, ED did not include any recordkeeping requirements in its proposed regulations. As noted in part III.D.2.f of this preamble, the Agencies made changes to clarify the responsibilities of faith-based service providers to distinguish between their obligations if they made a successful referral or could not make a referral. ED decided to add language to its revised §§ 75.713(d) and 76.713(d) to clarify the types of records that a faith-based organization would have to maintain, at a minimum, if it made a successful referral. See revised §§ 75.713(d)(1), 76.713(d)(1). These changes were not needed to require recordkeeping regarding referrals but to clarify what types of records had to be maintained, at a minimum.

vii. Notification of Government and Timeframe of Referral

Consistent with the discussion in part III, ED has made changes to the proposed regulations to distinguish between the responsibilities of faith based organizations when they make a successful referral and when they are unable to refer a beneficiary to an alternative provider. If a faith-based organization makes a successful referral, the final regulations specify the content of the record that the organization must maintain, requiring a record of the name of the alternative provider and its address and contact information. However, when an organization cannot make a referral, the organization must promptly notify the entity that made the award under which the referral could not be made. For example, a grantee that could not make a referral would have to promptly notify ED and a subgrantee that could not make a referral would notify the State or other pass-through entity. See final regulations at 34 CFR 75.713(d), 76.713(d). If the entity that made the award cannot identify an alternative provider to which a referral can be made on behalf of the faith-based organization, it must promptly notify the entity that awarded it financial assistance. For example, if a faith-based subgrantee can't make a referral and promptly reports that fact to its pass-through entity and the pass-through entity also cannot identify and make a referral, the pass-through entity must promptly notify ED, which would then be responsible for determining whether a referral can be made. All grantees and subgrantees of ED must maintain financial records and records regarding compliance with grant requirements, including those in these final regulations. See final regulations at 2 CFR 200.333; 34 CFR 75.730–75.732, 76.730, 76.731. Those records must include documentation of the efforts made by the faith-based organization to make a referral and its prompt reporting to its awarding agency if it can't make a referral to an alternative provider.

viii. Clarification of Who Is Responsible for Making the Referral

ED has made changes to the proposed regulations so that, in these final regulations, grantees, including States, and subgrantees must make the initial effort to determine whether a referral can be made when a faith-based organization cannot make a referral to an alternative provider. Under the proposed regulations, the order in which intermediaries and ED must make such a determination was not clear, especially in cases where a grantee or subgrantee awarded a contract to provide program services. These final regulations clearly require a faith-based contractor that cannot make a referral to promptly report that fact to the agency that made the award to the organization, which has the responsibility to determine if a suitable referral can be made. If that agency is a subgrantee and it cannot make a referral, it must promptly report that fact to the grantee that awarded the subgrant, which then has the responsibility to determine if a suitable referral can be made.

ED notes that in the case of subgrants awarded by States, the States are much more aware of the resources in their States and are better equipped to identify potential alternative providers than ED. Therefore, ED has changed the language in 34 CFR 75.713(d) and 76.713(d) to make clear that the subgrantee or grantee, including a State, that made the award under which the referral could not be made must determine whether a referral to an alternative can be made. Ultimately, if neither the subgrantee nor grantee, including a State, can identify an alternative service provider, the grantee must notify ED, which would then have to determine whether a referral can be made. ED is developing policy guidance to assist subgrantees and grantees, including States, in developing procedures to determine whether an alternative placement can be made.

5. Political or Religious Affiliation

a. Merit-Based Decisions

Covered in part III of this preamble.

b. Access to Federal Funding

Summary of comments: ED received one agency-specific comment regarding the perceived conflict between these final regulations and statutory requirements that may require faith-based organizations to be treated differently from other organizations. Specifically, the commenter indicated that in programs under ESEA that require an LEA to provide equitable services to children enrolled in a private school, those services may be provided through a contract. See 20 U.S.C. 6320(a)(5), 7881(a)(5). The commenter further noted, however, that under those programs a contractor "shall be independent of such private school and of any religious organization." See 20 U.S.C. 6320(d)(2)(B)), 7881(d)(2)(B). The commenter recommended that the proposed regulations be modified to reflect such statutory restrictions.

Response: ED does not believe that a change to the proposed regulations is necessary to address this issue. Although the proposed regulations provide that a faith-based organization is eligible to contract with grantees and subgrantees on the same basis as other private organizations, where a statutory provision provides otherwise, that provision controls.

Changes: None.

c. Political Influence

Consistent with the discussion of this comment in part III, ED has made changes to the proposed regulations to more closely track the language in Executive Order 13559, which provides that decisions "about awards of Federal financial assistance must be free from political interference or even the appearance of such interference and must be made on the basis of merit, not on the basis of the religious affiliation of a recipient organization or lack thereof." The proposed regulations did not include the phrase "or lack thereof." These final regulations now include that phrase. See final regulations at 2 CFR 3474.15(b)(2); 34 CFR 75.52(a)(2), 76.52(b)(2).

6. Monitoring

ED is developing policy guidance to ensure that its grantees, subgrantees, and contractors of those recipients are fully informed of their responsibilities regarding the treatment of private organizations and that these organizations understand their responsibilities toward the beneficiaries they serve under programs funded by ED. Within 90 days after this final rule is published, ED intends to provide training to its employees regarding their responsibility to ensure that faith-based organizations are treated fairly in competitions administered by ED. ED will also train its employees so they can provide policy guidance to applicants and grantees, ensuring that they are aware of their responsibilities under these final regulations.

7. Other Issues

a. Nondiscrimination in Employment Decisions/Religious Freedom Restoration Act

Covered in part III of this preamble.

b. Reinforcement of Other Non-Discrimination Protections

Covered in part III of this preamble.

c. Existing Anti-Discrimination Laws (*e.g.,* Race, Color and National Origin)

Covered in part III of this preamble.

d. Definitions for "Social Service Program" and "Federal Financial Assistance"

As noted in part III of this preamble, ED proposed regulations that would apply to all of its discretionary grant programs because most of its programs are social service programs. There was no need to delineate which ED programs are social service programs because these final regulations do not apply to the student financial assistance programs of ED. Those programs are not subject to the grant regulations in 34 CFR parts 75 and 76, which apply only to discretionary and State-administered programs of ED. These regulations also do not apply to ED's research programs because, even though those programs are subject to these final regulations in 34 CFR parts 75 and 76, they do not serve beneficiaries. Given that these regulations do not apply to student financial assistance or research programs, they also do not address whether a particular program was considered a "social service" program.

e. Display of Religious Symbols

Covered in part III of this preamble.

f. Eligibility of Faith-Based Organizations To Receive Federal Funding

Covered in part III of this preamble.

g. Training Requirements

As noted in the discussion of the monitoring issues in this ED-specific part of the final rule notice, ED is developing training for its employees and policy guidance and resource materials to ensure compliance with these final regulations.

8. ED Findings & Certifications

The following reflect ED findings and certifications that are not otherwise addressed in Part V.

Paperwork Reduction Act of 1995

The Paperwork Reduction Act of 1995 (PRA) does not require you to respond to a collection of information unless it displays a valid OMB control number. ED displays the valid OMB control number assigned to the collection of information and notice requirements in these final regulations at the end of each affected section of the regulations. The preamble to ED's NPRM assessed the burden imposed under the following proposed regulations: 2 CFR 3474.15; 34 CFR 75.712, 75.713, appendix A to part 75, 76.712, and 76.713. See 80 FR 47253 at 47261–47265. These final regulations make minor changes to these proposed regulations to clarify the information that faith-based organizations must maintain when they make successful referrals and no longer require faith-based organizations to notify ED or any intermediary when successful referrals are made. These changes do not affect the burden analysis included in ED's NPRM.

Assessment of Educational Impact

In accordance with section 411 of the General Education Provisions Act, 20 U.S.C. 1221e–4, ED requested comments in the NPRM on whether the proposed regulations would require transmission of information that any other agency or authority of the United States gathers or makes available.

B. Department of Homeland Security

Unlike most of the other Agencies, DHS has not previously issued final regulations related to the participation of faith-based organizations in DHS programs. In 2008, DHS issued a notice of proposed rulemaking on this subject. Nondiscrimination in Matters Pertaining to Faith-Based Organizations, 73 FR 2187 (Jan. 14, 2008). In 2015, DHS issued a supplemental notice of proposed rulemaking ("SNPRM") in concert with the other Agencies. The SNPRM addressed comments received in response to the 2008 notice of proposed rulemaking and proposed additional changes to address Executive Order 13559. Except as directly relevant to additional comments received on the supplemental notice, DHS does not further address those earlier comments here. DHS incorporates by reference the preambles to the 2008 and 2015 proposals, except where the 2008 proposed regulations were superseded by the discussion in the SNPRM, or either proposal is superseded by the discussion here.

DHS received a total of 86 comments on its SNPRM by October 7, 2015, and did not consider one comment received substantially after that date. Many of the comments were identical or nearly identical to comments provided to the other Agencies and addressed above in part III, although some of these cross-cutting comments did not directly apply, or did not apply in the same way, to DHS. Some of those cross-cutting comments included additional remarks related to DHS's SNPRM; in addition, DHS received several other comments specific to its SNPRM. Approximately half of the comments DHS received were identical, or nearly identical, to one another. Many comments expressed general support for the regulations, while other comments flatly opposed any Federal financial assistance being provided to faith-based organizations. Those general issues were addressed in part III above.

In the following discussion, we address DHS-specific issues related to each of the comment areas addressed in part III. Except where specifically noted, to the extent that a comment addressed in part III pertained to the DHS SNPRM, DHS adopts the analysis provided therein. In addition to the changes noted here, DHS has made small editorial changes to improve the readability of the final regulations.

The following responds to additional comments received in response to the SNPRM.

1. Prohibited Use of Direct Federal Financial Assistance

a. "Explicitly Religious" Activities

DHS concurs with the discussion of this subject in part III. DHS's SNPRM included language that faith-based organizations may not be disqualified from receiving grant funds due to their religious motivation, character or affiliation. This revised language appears in final 6 CFR 19.3(b).

b. Chaplaincy

As explained in part III, DHS has made changes to 6 CFR 19.3(e) to harmonize language with the Agencies and further clarify that the regulations do not affect DHS's ability to fund services that can permissibly be funded under the Establishment Clause, notably chaplaincy services. All of the comments DHS received on this subject are addressed in part III.

2. Direct and Indirect Federal Financial Assistance

As explained in part III, DHS's SNPRM had differentiated more sharply than some other Agencies with respect to the application of nondiscrimination requirements to beneficiaries of indirect assistance. For the reasons explained above, the final DHS regulations are now consistent with those of other Agencies; the beneficiary protection against nondiscrimination now also applies to programs in which faith-based organizations receive indirect assistance. Although recipients of indirect assistance must comply with the nondiscrimination requirement, such recipients need not modify their program activities to accommodate beneficiaries. These changes appear in final 6 CFR 19.5.

3. Intermediaries

a. Role of Intermediary Organizations

Summary of comments: DHS received specific comments regarding this issue, addressed generally in part III, recommending that the responsibilities of intermediary entities to ensure compliance with the regulations be spelled out more clearly. These commenters urged that some of the language in the preamble to the SNPRM be more clearly articulated in regulatory text.

Response: The fundamental requirement that an intermediary ensure compliance by sub-recipients is included in the definition of "intermediary" in 6 CFR 19.2. As explained in part III, however, DHS agrees that the SNPRM did not fully specify intermediary entities' roles in receiving complaints or making referrals where a recipient organization was unable to do so. Accordingly, the final regulations clarify that complaints may go to either DHS or an intermediary entity, and that when a recipient is unable to make a referral despite reasonable efforts, it may report that failure to either DHS or the intermediary. The intermediary in turn will report the need for referral assistance to DHS, and will either help to make the referral itself or seek further assistance from DHS. These changes appear in final 6 CFR 19.6(a)(5) and 19.7(d), respectively. The model beneficiary notice form in appendix A has also been revised to provide an opportunity for recipients or intermediaries to include contact information for an intermediary.

Change: None.

4. Protections for Beneficiaries

DHS concurs in the discussion of this subject in part III. DHS's SNPRM made clear that the individual beneficiary notice is only required for recipients of direct assistance. Accordingly, no change is made in response to that issue. However, DHS has revised the requirements related to the content of beneficiary notices to specify that providers cannot discriminate based on a refusal to hold a religious belief or to attend or participate in a religious practice. See 6 CFR 19.6(a)(1) and appendix A. DHS is also adding, in final 6 CFR 19.7(d), the requirement that, when a provider has been unable to make a referral, it report that failure promptly, as explained in part III.

With respect to determining which entity is responsible for making a referral in programs with both an intermediary and a sub-recipient provider, DHS has added clarifying language to 6 CFR 19.7(d). Under the final regulations, an organization unable to make a referral after reasonable efforts may notify either DHS or the intermediary, and then either DHS or the intermediary will determine whether an appropriate referral provider is available. When the sub-recipient chooses to contact the intermediary, the intermediary must notify, and may seek additional assistance, from DHS. For clarity, DHS has also revised the definition of "beneficiary" to make clear that, except where expressly noted or inapplicable, the term also encompasses prospective beneficiaries, and has correspondingly removed the term "prospective beneficiary" from a number of places throughout the regulations.

a. Beneficiary Notice

i. Written Notice, Including for Vulnerable Populations

Summary of comments: One commenter expressed concern that the SNPRM was not sufficiently specific about providing the written notice to beneficiaries who are members of vulnerable populations, such as child victims of human trafficking. The commenter suggested additional guidance to recipients on explaining beneficiary protections to vulnerable populations, and a requirement that where the recipient is concerned the written notice may be insufficient, the recipient should provide verbal notice to the beneficiary. Another commenter suggested that in addition to individual written notices, a large notice board should be displayed wherever social services are provided by faith-based providers to inform beneficiaries of their rights. That commenter also noted the need for language access for beneficiary communities containing LEP individuals.

Response: DHS agrees that effective notice to beneficiaries is important, and that additional steps may be appropriate to ensure effective communication with particular vulnerable populations, such as individuals with limited English proficiency or individuals with certain disabilities. As noted above in the part III, recipients of DHS financial assistance, as defined by these regulations, are already obligated to provide meaningful access to individuals with limited English proficiency and not to discriminate on the basis of disability, pursuant to Executive Order 13166, Title VI of the Civil Rights Act of 1964, and the Rehabilitation Act, among other obligations. See also DHS, Guidance to Federal Financial Assistance Recipients Regarding Title VI Prohibition Against National Origin Discrimination Affecting Limited English Proficient Persons, 76 FR 21755 (April 18, 2011). While further policy guidance and reference materials, or program-specific documents, might recommend additional verbal notice for particular populations, including where children are beneficiaries, DHS declines to add additional complexity to the general notice requirement in light of the protections already in place to require appropriate and effective communication with many vulnerable populations.

While a central notice board, used in addition to individual beneficiary notices, would be consistent with the regulations if an organization chose to erect one, DHS declines to require such a board. Some covered social service programs may not offer their services in a location where a large board would be feasible or meaningful. As explained in the supplemental notice, DHS anticipates that in cases where individual notices are impracticable, such as during a brief, potentially one-time interaction (*e.g.,* a soup kitchen), a conspicuous posted notice would satisfy the written notice requirement.

Change: None.

b. Referrals

i. Religious Character of an Organization

Summary of comments: One commenter expressed concern that beneficiaries may not understand what constitutes the "religious character of an organization" when making an objection and, as a result, when confronted with prohibited behavior, such as including expressly religious content in a program receiving direct assistance, may request a referral as opposed to reporting the violation to DHS or to an intermediary awarding entity. The commenter also expressed concern that this potential misunderstanding would make the referral provision difficult to enforce.

Response: As described in part III, DHS has revised the proposed regulatory text and model beneficiary notice and referral form, at 6 CFR 19.6(a)(5), to clarify that complaints can be filed on a violation of any beneficiary protection, including any denial of service or benefits. DHS believes that, with these changes, the regulations and model form are sufficiently clear that any program violation can be subject to a written complaint to the Office for Civil Rights and Civil Liberties (CRCL), which has broad authority to receive and investigate such complaints. See 6 U.S.C. 345; *www.dhs.gov/crcl.* Because the referral form will generally be part of the notice to beneficiaries, as in the model notice presented in DHS's appendix A, the form will remind beneficiaries that a complaint arising from a denial of services or benefits is also appropriate. DHS believes that the referral procedures and complaint function described in the regulations will enable appropriate enforcement of the referral requirement.

Conversely, DHS believes that basing referrals on a beneficiary's objection to the "religious character" of the organization is sufficiently clear to beneficiaries and recipients. While additional policy guidance or reference materials may be provided at a later time, DHS expects the term will be understood broadly without further interpretation. DHS does not intend, and does not expect of its recipients, to scrutinize the religious nature of a beneficiary's objection. Rather, recipients should take reasonable steps to identify a suitable referral, as required in the regulations, whenever a beneficiary asserts such an objection. The beneficiary notice form, for this same reason, does not seek any detail on the specific nature of a beneficiary's objection.

Change: Language regarding complaints of denials of services or benefits has been added to 6 CFR 19.6(a)(5) and the model notice in appendix A.

ii. Nondiscrimination and Beneficiaries

Summary of comments: One commenter expressed the concern that some faith-based organizations may be unable to provide all of the social services facilitated through a DHS financial assistance program due to the organization's religious mission or charter. The commenter noted concern that some organizations may be so constituted as to be unable to distribute programming without regard to beneficiaries' religion, or could be unable to separate expressly religious content from a DHS-funded program.

Response: DHS believes that the regulations include appropriate protections to ensure that faith-based organizations do not use their Federal financial assistance for prohibited purposes or in a prohibited manner. 6 CFR 19.4(c) provides that all participating organizations must comply with all program requirements, including those prohibiting the use of direct financial assistance from DHS to engage in explicitly religious activities. An organization unable or unwilling to comply with those terms would be ineligible to serve as a recipient—not because of the organization's religious mission or charter, but because the organization would not be able to comply with the program requirements.

Change: None.

iii. Support in Finding Referral Organizations

Summary of comments: One commenter suggested that the requirement under 6 CFR 19.7(a) that "organizations must promptly undertake reasonable efforts" to make a referral is vague. The commenter suggested that it is unclear what constitutes "reasonable efforts" and therefore recommended that DHS provide recipients with resources or guidance on how to fulfill this requirement. In particular, the commenter noted that placing a voucher in the hands of the beneficiary and expecting the beneficiary to locate an alternative provider may not be adequate.

Response: The referral requirement, which is applicable to programs receiving direct assistance (not vouchers), requires referrals to alternative providers to which the beneficiary has no objection, not issuance of a voucher that the beneficiary would need to take to find an alternative provider him or herself. The regulations do not anticipate that a program funded directly would provide a mechanism for a recipient to convert that assistance into a voucher that would be given to a beneficiary seeking a referral. DHS therefore does not believe that the referral situation the commenter is concerned about would be consistent with the regulation. Furthermore, 6 CFR 19.7(d) requires that if an organization determines that it is unable to identify an alternative provider, it must promptly notify DHS or an intermediary, which will determine whether there is any other suitable provider. While DHS does not believe the commenter's concern about vagueness requires changes to the proposed regulations, DHS may consider providing additional policy guidance or reference materials at a future time on what constitutes "reasonable efforts." As explained both in part III and below, DHS believes that approximately two hours of staff time will satisfy the reasonable effort requirement, and DHS also expects that many successful referrals will require far less time.

Change: No change, beyond the changes to 6 CFR 19.7(d) already noted.

5. Political or Religious Motivation

DHS concurs in the discussion in part III. Accordingly, DHS has added language in 6 CFR 19.3(c) clarifying that award decisions must be free of the appearance of political interference, and may not be on the basis of religion or religious belief or lack thereof, or on the basis of religious or political affiliation.

6. Monitoring

In addition to the discussion in part III, with which DHS concurs, DHS received the following comment:

a. Monitoring Compliance Through an Oversight Board and Express Conditions

Summary of comments: One commenter recommended that Federal agencies create an independent board to monitor faith-based recipients. The same commenter also recommended that DHS condition program funds on compliance with, in particular, the requirements for separation in time or place of programs supported by direct assistance from other programs that contain express religious content.

Response: DHS agrees with the commenter that ensuring ongoing compliance with these regulations and other terms and conditions applicable to DHS financial assistance is critical. However, DHS believes that internal monitoring and oversight by DHS and intermediaries, including through ongoing compliance monitoring of grantees and investigation of complaints directed to the DHS Office for Civil Rights and Civil Liberties by beneficiaries, will provide an appropriate form of ongoing monitoring. An additional outside oversight body would create substantial expense for DHS and potentially a significant burden on recipients and DHS does not anticipate compliance problems of a scale that would justify those burdens.

With respect to conditioning funds on compliance, 6 CFR 19.4(c) requires all DHS programs to apply the same standards to faith-based and other organizations, and requires recipient organizations to comply with all program requirements. This is tantamount to expressly conditioning the funding on compliance with program requirements, as the commenter suggests. 6 CFR 19.5 notes that recipients may be subject to sanctions and penalties for failure to abide by the nondiscrimination requirements. DHS already has in place monitoring protocols to review recipients of DHS assistance, including intermediaries, for compliance with the terms and conditions of awards of Federal financial assistance. These terms and conditions include applicable statutory and regulatory requirements. DHS will revise those protocols as necessary to ensure that compliance with these regulations is monitored along with the other terms and conditions that apply to covered financial assistance.

Change: None.

7. Other Issues

DHS concurs in the discussion in part III. While DHS received comments addressing discrimination on the basis of religion in employment, that issue was addressed in the response to comments on the initial proposed rulemaking, and no new issues were raised. DHS received comments on two additional issues that were within the scope of the supplemental notice:

a. Ambiguity in the Purpose of the Proposed Regulations

Summary of comments: One commenter suggested that DHS revise the statement of purpose at proposed 6 CFR 19.1. The commenter stated that, as proposed, the statement of purpose focused solely on the benefits to faith-based organizations from expanded opportunities to participate in Federal social service programs. The commenter suggested that the statement of purpose should also reference the benefits described in Executive Order 13498, namely that the faith-based organizations are well-positioned to deliver services and address vital social needs. The commenter suggested that these changes would highlight the value to beneficiaries of facilitating faith-based organizations' involvement in Federal social service programs.

Response: DHS is committed to the aims of the relevant Executive Orders, including the statement of purpose and policy noted by the commenter in Executive Order 13498. Accordingly, DHS has revised the language of 6 CFR 19.1 to more clearly articulate that the regulations will strengthen the ability of faith-based organizations to provide vital services for beneficiaries.

Change: Additional language has been added to 6 CFR 19.1.

b. Employee Preference and Understaffing

Summary of comments: One commenter expressed concern that faith-based organizations that limited their hiring based on religious affiliation might be unable to fill positions in rural or remote areas, and that beneficiaries requiring immediate assistance in the aftermath of a disaster may therefore go unserved by the organization.

Response: DHS appreciates the concern for adequate provision of social services in a range of locations. An organization that cannot effectively deliver a social service, whether because its workforce is limited to members of one religion or for some other reason, would be a poor choice as a recipient in the covered DHS social service program.

DHS is satisfied that such concerns can be addressed through the relevant grant and contract processes by ensuring that recipients are able to fulfill all program requirements, including staffing levels.

Change: None.

8. DHS Findings and Certifications

Regulatory Flexibility Act

Under the Regulatory Flexibility Act of 1980 (RFA), 5 U.S.C. 601–612, as amended, DHS has considered whether these regulations would have a significant economic impact on a substantial number of small entities. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

Given the lack of specific small entity data, DHS included an initial regulatory flexibility analysis in the SNPRM even though DHS does not believe these regulations will impose a significant economic impact on a substantial number of small entities. See 80 FR 47294–95. Commenters on the SNPRM did not provide significant additional specific small entity data. Accordingly, DHS incorporates by reference the SNRPM's initial regulatory flexibility analysis into this rule's final regulatory flexibility analysis. Except as specifically stated below, DHS continues to use the total estimate of approximately 2,600 faith-based recipient organizations for purposes of this regulatory analysis, as well as the other components of the cost estimates that DHS used in its SNPRM.

As described above, DHS has made every effort to ensure that the disclosure and referral requirements of the regulations impose minimum burden and allow maximum flexibility in implementation by providing a model notice to beneficiaries and model beneficiary referral request form in appendix A, and by not requiring the social service providers to follow a specific procedure for the referrals. In addition, individual advance notice forms are not required where it is impracticable to provide them. Where individual, advance written notice is impracticable because the recipient and beneficiary have only a brief, potentially one-time interaction, such as at a soup kitchen, DHS believes a conspicuous posted notice would suffice.

DHS estimates it will take no more than two hours for providers to familiarize themselves with the notice requirements and print and duplicate an adequate number of disclosure notices and referral request forms for potential beneficiaries, and a cost in paper and toner of no more than approximately $100.

DHS further estimates a total cost of making referrals of approximately $13,000, spread out over the approximately 2,600 faith-based recipient organizations.[17] In its SNPRM, DHS provided an estimate of approximately $26,000, based on an estimate that completing a referral would take no more than four hours of staff time. 80 FR 47296–97. One commenter noted that other Agencies' estimates of two hours to complete the referral was "without basis." As explained further in part III in response to that comment, the Agencies have stated that approximately two hours of staff time should suffice to establish that reasonable efforts have been expended to attempt to make a referral. That is, while many successful referrals will take far less time, two hours of unsuccessful should be enough to establish that reasonable efforts were taken. As many referrals can successfully be made in less than two hours, and two hours will generally constitute a reasonable effort when unsuccessful, the average burden will likely be far under two hours, but to provide a conservative estimate, DHS is using two hours as its estimate of the average burden.

This estimate yields a total estimate of approximately $13,000—one half of what the SNPRM estimated based on a four-hour period of reasonable effort.[18]

Hence DHS estimates a total burden of less than $200 per year for each of approximately 2,600 faith-based recipient organizations. This is an impact to a substantial number of small entities. However, DHS does not believe that a compliance cost of less than $200 per provider per year is significant percentage of a provider's total revenue. In addition, after the first year, DHS expects the labor cost associated with compliance will likely decrease significantly because small service providers will be familiar with the requirements.[19]

DHS expects that this estimate likely overestimates the actual cost burden associated with this rulemaking. Consequently, DHS believes these final regulations would not impose a significant economic impact on a substantial number of small entities.

Paperwork Reduction Act

Under the Paperwork Reduction Act (PRA) of 1995, Public Law 104–13, all agencies are required to submit to the OMB, for review and approval, any reporting requirements inherent in a rule. See 44 U.S.C. 3506. Specifically, a Federal agency may not conduct or sponsor a collection of information unless OMB approves the collection of information under the PRA, and the collection of information must display a currently valid OMB control number. Notwithstanding any other provisions of law, no person will be subject to penalty for failing to comply with a collection of information if the collection of information does not display a currently valid OMB control number. 44 U.S.C. 3512; 5 CFR part 1320.

The regulations include new requirements. Section 19.6 requires faith-based or religious organizations that provide social services to beneficiaries under a DHS program supported by direct Federal financial assistance to give beneficiaries (or prospective beneficiaries) a notice instructing them of their rights and protections under this regulation and to make reasonable efforts to identify and refer beneficiaries requesting referrals to alternative service providers. The content of the notice and the actions the faith-based or religious organizations must take if a beneficiary objects to the religious character of the organization are described in the preamble and in the regulatory text; an optional model form is provided as appendix A. The burden of providing the notice to beneficiaries and identifying and referring a beneficiary to an alternative service provider are estimated in this section.

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[17] In this analysis and the Paperwork Reduction Act analysis below, DHS assumes that certain grantees and subgrantees under the Emergency Food and Shelter Program will not print and disseminate a paper notice and referral form to each individual beneficiary. Many of the activities supported by that program, such as soup kitchens and one-time assistance with rent, mortgage, or utility bills, are ones for which individual beneficiary forms would not be practicable, and in those cases, a commonly posted notice, produced at minimal cost, should suffice. DHS believes that requests for referrals will be negligible for activities involving these sorts of interactions, such that the overall estimated cost and labor burden related to the referral provision is conservative enough to encompass the limited number of referral requests that may result from these brief interactions.

[18] As a result of these changes, DHS slightly revises down its earlier estimate of the aggregate cost potentially imposed by the regulations. The SNPRM estimated a cost of $512,650 or less, but with the reduction in estimated staff time to make referrals from four hours to two, DHS now estimates that these regulations would impose, in the aggregate, a cost of approximately $500,000 annually for all affected organizations. The difference in estimated burden per recipient organization therefore declines from approximately $195 to approximately $191.

[19] DHS also notes that the costs associated with these regulations' notice provisions generally would be an eligible management and administrative cost under DHS grant programs. Such costs would count towards the administrative cap cost, if any, for a program. The cost of the referral to an alternate provider may also be grant-eligible.

Pursuant to program guidance and grant agreements, faith-based organizations that would be subject to these requirements would have to retain records to show that they have made referrals or sought assistance from an intermediary or DHS. Faith-based organizations could meet such a retention requirement by maintaining, in the case of paper notices, the bottom portion of a notice that takes the form of the model provided in the appendix. DHS does not include an estimate of the burden of records retention.

DHS has retention requirements included in information collection instruments for DHS programs. Those collection instruments cover burdens imposed under program and administrative requirements under current information collection instruments that are approved by OMB and each of those collections has an OMB-assigned information collection control number.

The retention burden that will be added to those information collection instruments under these regulations is so small as to not be measurable in the context of all the program and administrative requirements in the existing program collection instruments. For example, a grantee or subgrantee that has to provide notice under these regulations could meet the record-keeping requirement by collecting the tear-off portion of the notice for those beneficiaries that request alternative provider and keeping it in a designated folder. Therefore, DHS has determined that no burden would be added that would require estimates of time and cost burden as a result of maintaining records of compliance with the regulations.

DHS must impose the third-party notice requirements to implement the requirements of Executive Order 13559.

DHS has submitted an information collection request (ICR) to OMB to obtain PRA approval for the information collection formatting requirements contained in this rule. Control number 1601–NEW has been assigned to the instrument. The burden for the information collection provisions of this rule can be summarized as follows:

Agency: U.S. Department of Homeland Security, Office for Civil Rights and Civil Liberties.

Title of Collection: Written Notice of Beneficiary Protections.

OMB ICR Reference Number Control Number: 201505–1601–001.

Affected Public: State and local governments, not-for-profit organizations.

- Total Estimated Number of Organizations: R, where R represents the total number of entities that must give notice. To estimate this number, DHS relied upon information from two of its grant-making components: FEMA and USCIS. FEMA estimates that there are approximately 2,600 grantees and subgrantees that would have to provide some form of notice to beneficiaries.[20] USCIS estimates that there are approximately 24 grantees subject to the notice requirement.[21] Accordingly, DHS estimates that R is equal to approximately 2,600.
- Total Estimated Number of Notices: N, where N equals the total number of beneficiaries under DHS social service programs to whom provision of an individual written notice would be practicable. Faith-based organizations covered by these regulations are required to provide, where practicable, a notice to each beneficiary of DHS-supported social service programs.[22] Based on subject-matter expert best estimates, DHS estimates that the total annual number of notices required under these regulations equals approximately 60,000.[23]
- Total Estimated Annual Burden to Provide Each Notice: 60,000 minutes, or 1,000 hours (equivalent to 60,000 × T, where T is less than or equal to one minute).
- Total Estimated Annual Number of Requests for Referrals: N × Z, where Z is the percentage of beneficiaries or potential beneficiaries who request referrals. DHS assumes that Z is equal to .0025.[24] Under these assumptions, DHS estimates approximately 150 requests for referrals annually.
- Total time required to complete a referral T, where T is less than or equal to 2 hours.
- Total Estimated Annual Referral Burden Hours: B, where B is equal to the following:

$$B = (N \times Z) \times T.$$
$$B = (60{,}000 \times .0025) \times 2$$
$$B = 300$$

DHS therefore estimates that the Total Estimated Annual Burden Hours is 1,300 hours (1,000 for notices, 300 for referrals) or less. DHS expects that this significantly overestimates the actual burden hours associated with this rulemaking. As noted above, the Agencies received one comment about the burden involved, noting that several agencies estimated fewer burden hours than did DHS, and DHS now shares the other Agencies' approach, on which the two hour estimate is based on an understanding of what, on average, would establish that reasonable efforts were undertaken. DHS believes that these estimates fairly estimate, or over-estimate, the average burden required to discharge a recipient's obligation to make reasonable efforts to identify an appropriate referral, once successful referrals completed in less time are factored in.

The recipient provider will be required to complete the referral form, notify the awarding entity, and maintain information only if a beneficiary requests a referral to an alternate provider.

National Environmental Policy Act

U.S. Department of Homeland Security Management Directive (MD) 023–01 establishes procedures that the Department and its components use to comply with the National Environmental Policy Act of 1969 (NEPA), 42 U.S.C. 4321–4375, and the Council on Environmental Quality (CEQ) regulations for implementing NEPA, 40 CFR parts 1500–1508. CEQ regulations allow Federal agencies to establish categories of actions which do not individually or cumulatively have a significant effect on the human environment and, therefore, do not require an Environmental Assessment or Environmental Impact Statement. 40

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[20] This figure includes known grantees and subgrantees of the Emergency Food and Shelter Program, the Crisis Counseling Program, and the Disaster Case Management Program.

[21] This figure includes known grantees and subgrantees of the Citizenship and Integration Grant Program.

[22] As noted above, in this analysis, DHS assumes that certain grantees and subgrantees under the Emergency Food and Shelter Program provide services of a brief and potentially one-time nature such that individual notice would not be practicable. Creation of a common posted notice in those circumstances would be comparable in burden to creating a single notice, and so creation of such common notices is encompassed within the estimates provided for compliance with the beneficiary notice provision.

[23] DHS notes that in light of the nature of the grantor-grantee-subgrantee framework attendant to some of its programs, it is very difficult to estimate with accuracy the total number of beneficiaries served by faith-based organizations administering DHS-supported social service programs. In general, to produce the estimate described above, for each covered program, DHS calculated the percentage of grantees and subgrantees that may qualify as a faith-based or religious organization under these regulations. DHS then multiplied that percentage figure by the estimated total number of beneficiaries for each program, producing an estimate of the total number of individuals served by faith-based or religious organizations under each program.

Where using this methodology was not feasible due to data limitations, DHS relied on subject matter experts in the relevant grant program to make an appropriate best estimate.

[24] In DHS's experience, beneficiaries do not frequently object to receiving services from faith-based organizations. DHS assumes a referral request rate of 0.25% for purposes of this analysis, consistent with the practice of other agencies in this area. DHS expects that this rate overestimates the likely referral request rate.

CFR 1508.4. DHS MD 023–01 lists the Categorical Exclusions that the Department has found to have no such effect. MD 023–01 app. A, tbl.1.

DHS has analyzed these regulations under MD 023–01 and has determined that this action is one of a category of actions which does not individually or cumulatively have a significant effect on the human environment. These regulations clearly fit within the two Categorical Exclusions found in MD 023–01: A3(a): "Promulgation of rules . . . of a strictly administrative and procedural nature"; and A5: "Awarding of contracts for technical support services, ongoing management and operation of government facilities, and professional services that do not involve unresolved conflicts concerning alternative uses of available resources." These regulations are not part of a larger action. They present no extraordinary circumstances creating the potential for significant environmental effects. Therefore, these regulations are categorically excluded from further NEPA review.

C. Department of Agriculture

On August 6, 2015, the Department of Agriculture (USDA) published a proposed rule at to amend its "Equal Treatment" regulations at 7 CFR part 16 consistent with Executive Order 13559. USDA received comments from 97 parties. The overwhelming majority of comments received by USDA are addressed in the cross-cutting section at part III of this preamble. USDA adopts all of those responses that apply to all of the Agencies that are publishing final regulations, unless otherwise noted in the following discussion. Those responses also indicate that Agencies will issue policy guidance or reference materials that will further clarify various issues, such as the prohibition against "explicitly religious" activities. USDA will issue non-regulatory guidance that will address all of those issues. USDA believes such guidance will be the most effective way to address a variety of more detailed matters in the contexts in which they typically apply to USDA programs. USDA will also continue to provide training for USDA employees and grantees involved in those programs to which these rules are most typically involved.

We concur in the resolution of the issues in part III of the preamble. Specifically;

- USDA adopts the Executive order's exact language that decisions about awards of Federal financial assistance must be made on the basis of merit and not an organization's religious character or affiliation, or lack thereof; and language prohibiting discrimination against beneficiaries based on religion, a religious belief, a refusal to hold a religious belief, or a refusal to attend or participate in a religious practice.
- USDA has revised 7 CFR 16.4(g)(3) consistent with the cross-cutting section of this preamble in part III.D.2, entitled "Referrals." As indicated therein, the obligation that religious organizations will have to notify their awarding entities of any alternative provider referrals is more limited in this final regulation. This final regulation only requires religious organizations to notify their awarding Agencies when they are unable to identify an alternative provider, rather than also requiring them to provide such notice any time they make a referral. It also now requires that such reports be made "promptly." USDA agrees with the commenters that recommended these changes.

USDA addresses below the USDA-specific comments that are not addressed in part III of the joint preamble, using the same subheadings to which these comments would apply in that section. After those comments USDA-specific regulatory findings and certifications are indicated.

1. Prohibited Use of Direct Federal Financial Assistance

Summary of comments: One commenter stated that the USDA proposed rule needed clarification as to whether the requirement that explicitly religious activities must be separate in time or location from federally funded programs applied to indirect funded programs.

Response: USDA believes the commenter erroneously read 7 CFR 16.4(b), which clearly refers to direct assistance only when describing separation requirements. The final regulation now explicitly states that the separation requirements do not apply when funds are provided through indirect programs.

Change: USDA's final regulation clarifies in its own part that separation requirements do not apply when funds are provided through indirect programs.

Affected regulations: 7 CFR 16.4(h).

4. Protections for Beneficiaries

a. Beneficiary Notice

i. Child Nutrition Programs

Summary of comments: A comment representing several faith-based organizations expressed concern with the USDA proposed regulation, at redesignated 7 CFR 16.4(f), on the notice and referral requirement of beneficiary protections. The commenter believed that the proposed language in part would require faith-based schools, which provide direct Federal assistance through participation in the USDA Food and Nutrition Service (FNS) Child Nutrition Programs (CNP), including the National School Lunch Program and the School Breakfast Program, to provide students enrolled in those schools daily notice of their opportunity to be referred to an alternate provider for their school meal benefits. The commenter pointed out that the practical but unacceptable result could be that, once notified, students could potentially choose to leave the school campus to receive school meal benefits at an alternate school site.

Response: USDA shares the commenters concerns and agrees that allowing students to leave the school campus to receive USDA FNS school meal benefits from an alternate provider would be impractical, create a hardship for both the faith based schools as well as alternate provider schools, and would represent a potentially hazardous situation for students. In response to the comments, USDA has concluded that, with respect to the notice and referral requirement, the Child Nutrition Programs should be treated in the same manner as an indirect assistance program under these rules. As with an indirect assistance program, the benefits under these programs are provided as a result of a "genuine and independent choice" on the part of parents or guardians who chose to enroll children in a faith-based school as an alternative to a public school—and there is broad awareness at the time of enrollment that the benefits are not dependent on the choice of a faith-based school.

Change: USDA's final rule amends the new 7 CFR 16.4 to extend the exemptions currently contained in 7 CFR 16.3(b) to also include exemptions for the notice and referral requirements for programs such as the USDA Child Nutrition Programs.

Affected regulations: 7 CFR 16.4(h).

ii. International Programs

Summary of comments: One commenter requested clarification that the notice and referral obligations in USDA's proposed 7 CFR 16.4(f) and (g) applied only to domestic social services programs. The commenter noted that the IWG report, which the Agencies used to develop these regulations, acknowledge that the model regulations and guidance for Agencies focus on domestic considerations and that the Agencies must consider additional implications when applying the guidance to programs operating in foreign countries.

Response: USDA agrees with the commenter's request that the beneficiary rights provisions in the final regulations should apply only to domestic Federal assistance programs. The commenter accurately describes the recommendations of the IWG report with respect to the applicability of the guidance to programs in foreign countries. In addition, note that, as explained in the joint preamble, the notice and referral requirements for recipients of direct financial assistance apply only to domestic programs.

Change: USDA's final regulations include language stating that the notice and referral obligations contained in its regulations apply only to those recipients administering domestic programs.

Affected regulations: 7 CFR 16.4(f), (g).

iii. Brief Interactions With Beneficiaries

Summary of comments: A number of commenters, including national coalitions of food banks and soup kitchens, as well as individual local and regional food banks and soup kitchens, expressed concerns that the regulations did not include the language set forth in the original preamble, that allows certain service providers to post a general notice to beneficiaries if the provider has only a brief interaction with the beneficiary, rather than provide individual notice to each beneficiary. Additionally, the commenters noted that there were additional scenarios in which a general notice to beneficiaries is appropriate.

Response: USDA shares the commenters concerns and agrees that there are circumstances when a posting of a notice (rather providing than an individual notice) is appropriate. Additionally, there are more circumstances than those listed in the original preamble, and set forth below, when such posted notice would be appropriate. As noted in USDA's proposed regulations preamble, when the service provided to the beneficiary involves only a brief interaction between the provider and the beneficiary, and the beneficiary is receiving what may be a one-time service from the provider (such as a meal at an emergency kitchen, or one-time assistance with rent, mortgage payments, or utility bills), the service provider may post the written notice of beneficiary protections in a prominent place, in lieu of providing individual written notice to each beneficiary. USDA agrees with the commenters that this circumstance would also extend to a circumstance when a beneficiary is receiving food for home consumption at a food pantry. There is nothing in the regulation itself that requires more than this, only that the notice be "given in a manner prescribed by USDA." Retaining the proposed regulatory text will allow each agency the discretion to assess the proper circumstances for the notice and to adjust those requirements as experience dictates. To further clarify this requirement, FNS will provide guidance on the manner of the beneficiary notice consistent with this response, following publication of this final regulation.

USDA agrees that record-keeping of referrals is important. USDA will continue to conduct oversight according to its program activities, and will provide program specific guidance on record-keeping because smaller program record-keeping requirements may be ill-suited for larger programs. For instance, USDA has estimated that The Emergency Food Assistance Program (TEFAP) would likely serve nearly 3.5 million people affected by this rule, and may issue nearly 3,500 referrals. Applying the same record-keeping requirements for smaller programs to TEFAP, which is largely made-up of volunteer-based organizations, may prove to be too burdensome. Thus, FNS will provide program specific guidance on record-keeping requirements consistent with redesignated 7 CFR 16.1.

Change: None

b. Referrals

i. Recordkeeping Requirements and Exemption for Faith-Based Organization When There Are No Alternative Providers in the Geographic Area

Summary of comments: A number of commenters, including national coalitions of food banks and soup kitchens, as well as individual local and regional food banks and soup kitchens, expressed concerns that the record-keeping requirements might impose too great a burden on volunteer-based organizations. Additionally, the commenters expressed concern that in certain, particularly rural parts of the country, a faith-based organization might be the only provider of the certain USDA services.

Response: USDA agrees with both of these concerns. Because many of USDA programs include services provided by volunteer organizations, the regulation provides that "[i]n some cases, USDA may require that the awarding entity provide the organization with information regarding alternate providers" and that "[a]n organization which relies on such information provided by the awarding entity shall be considered to have undertaken reasonable efforts to identify an alternate provider." As an example of these types of cases, FNS will provide guidance to State agencies on when they must provide information regarding alternative providers following publication of this final regulation. In these cases, it will relieve the burden on volunteer-based organizations while also providing consistent guidance to beneficiaries, developed and provided by professionals with the most knowledge of alternative providers in the region. USDA anticipates that this may include referral to Web sites, hotlines, or other service providers funded by the State agency.

Additionally, as stated in the preamble to the proposed rule, "[i]t must be noted that in some instances, the awarding entity may also be unable to identify a suitable alternate provider within a reasonable geographic proximity." Thus, the regulation requires only that the service provider "refer the beneficiary to an alternate provider, within reasonable geographic proximity to the provider, *if available*" (emphasis added).

Change: None.

8. USDA Findings & Certifications

Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601–612), as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to the notice and comment rulemaking requirements under the Administrative Procedure Act (5 U.S.C. 553) or any other statute, unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. USDA has determined that this rule will not have a significant impact on a substantial number of small entities. Consequently, USDA has not prepared a regulatory flexibility analysis.

Executive Order 12988: Civil Justice Reform

This final rule has been reviewed in accordance with Executive Order 12988, "Civil Justice Reform." The provisions of this final rule will not have preemptive effect with respect to any State or local laws, regulations, or policies that conflict with such provision or which otherwise impede their full implementation. The rule will not have retroactive effect.

Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

This rule has been reviewed in accordance with the requirements of Executive Order 13175, "Consultation and Coordination with Indian Tribal Governments." Executive Order 13175 requires Federal agencies to consult and coordinate with tribes on a government-to-government basis on policies that have tribal implications, including regulations, legislative comments or proposed legislation, and other policy statements or actions that have substantial direct effects on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

USDA's Center for Faith-Based and Neighborhood Partnerships has assessed the impact of this rule on Indian tribes and determined that this rule does not, to our knowledge, have tribal implications that require tribal consultation under Executive Order 13175. If a Tribe requests consultation, the Center for Faith-Based and Neighborhood Partnerships will work with the USDA Office of Tribal Relations to ensure meaningful consultation is provided where changes, additions and modifications identified herein are not expressly mandated by Congress.

Paperwork Reduction Act (PRA)

In accordance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. chapter 35, as amended), an agency may not conduct or sponsor a collection of information, and a person is not required to respond to a collection of information, unless the collection displays a currently valid OMB control number. The preamble to the USDA's proposed regulations assessed the burden imposed under this final regulation. This final regulation makes no changes to the proposed regulations and, therefore, do not affect USDA's burden analysis.

D. Agency for International Development

USAID received a total of 237 comments on its August 6, 2015 NPRM, and did not consider any comments received after that comment end date of October 7, 2015. Many of the comments were identical to comments provided to the other Agencies and addressed above in part III, although many of these cross-cutting comments did not directly apply, or did not apply in the same way, to USAID. Some of those cross-cutting comments included additional remarks specific to USAID's proposed regulations; in addition, USAID received several other comments only directed to its proposed regulations. Approximately 90% of the comments USAID received were identical or nearly identical to one another.

As reflected below, unless otherwise specified, for those comments received by USAID that are addressed fully in the cross-cutting section in part III, USAID adopts those responses. We address in this part IV.D of the preamble the USAID-specific comments not addressed in part III of the preamble and provide the USAID-specific findings and certifications.

Some of the cross-cutting comments addressed in part III of the preamble were not received by USAID, but are nevertheless applicable to the USAID regulations. Unless noted either in part III or this agency-specific part IV.D of the preamble, we concur in the resolution of the issues in that part of the preamble.

As noted in the August 6, 2015 NPRM, on March 25, 2011, USAID issued an NPRM proposing amendments to 22 CFR 205.1(d) of the final rule on participation by religious organizations in USAID programs originally published on October 20, 2004 (69 FR 61716, codified at 22 CFR parts 202, 205, 211, and 226 (22 CFR part 226 is now codified at 2 CFR part 700)). That process is ongoing. USAID is not making any amendments to 22 CFR 205.1(d) under this rulemaking.

1. Prohibited Use of Direct Federal Financial Assistance

In addition to the applicable cross-cutting comments on the issue of prohibited use of direct Federal financial assistance that are summarized in part III of this preamble, USAID provides the following additional discussion.

a. Chaplaincy

Summary of comments: USAID did not receive any comments on the issue of chaplaincy that were different from or more specific than the applicable cross-cutting comments that are summarized in part III of this preamble.

Response: USAID makes the regulatory changes noted below, consistent with the explanation provided in the applicable cross-cutting comments that are summarized in part III of this preamble.

Change: Revise 22 CFR 205.1(b) to clarify that that the regulations do not restrict USAID's authority under applicable Federal law to fund activities, such as the provision of chaplaincy services that can be directly funded by the Government consistent with the Establishment Clause.

Affected regulations: 22 CFR 205.1(b).

b. Nondiscrimination and Programs Funded in Part by Federal Financial Assistance

Summary of comments: In addition to the applicable cross-cutting comments on the issue of nondiscrimination and programs funded in part by Federal financial assistance that are summarized in part III of this preamble, one commenter specifically noted that given the centrality of USAID's international operations to achieving its goal of promoting economic development and distributing humanitarian aid, it should adopt specific language stating that these regulations apply to beneficiaries that are both U.S. and non-U.S. citizens, as well as to federally subsidized providers that are both U.S. and non-U.S. based.

Response: USAID declines to adopt such a statement. USAID has been implementing a nondiscrimination provision pursuant to its original regulations since 2004 without such a statement. Virtually all beneficiaries of USAID-funded programs are non-U.S. citizens; the language of these regulations is clear that it applies to all beneficiaries of USAID-funded programs. The existing language is also clear that this requirement applies to all organizations that receive funding from USAID. USAID further implements the requirements of the existing regulations by means of a mandatory standard provision included in award documents. That standard provision is already included in the list of standard provisions that apply to non-U.S. NGOs, and the standard provision updated as a result of this rulemaking will similarly be so included.

Change: None.

Affected regulations: None.

2. Direct and Indirect Federal Financial Assistance

USAID does not fund indirect Federal financial assistance programs as that term is used within Executive Order 13559. Thus, USAID did not include a discussion of indirect Federal financial assistance in its NPRM and does not adopt the discussion of the issue in part III B of this preamble.

3. Intermediaries

Summary of comments: In addition to the applicable cross-cutting comments on the issue of intermediaries that are summarized in part III of this preamble, commenters supported USAID's decision to clarify that the regulations' requirements are binding on intermediaries. Some commenters encouraged USAID to go even further in adopting provisions that explicitly articulate intermediary responsibilities. For example, some commenters encouraged USAID to take a more active role in establishing the "responsibilities of intermediaries" and the "applicability of requirements to sub-awardees."

Response: USAID declines to specify further the responsibilities of intermediaries. The regulations in their current form make clear that requirements relating to protections for beneficiaries and restrictions on prohibited uses of Federal financial assistance apply to all organizations that receive USAID financial assistance, regardless of whether that assistance is received through a prime award or sub-award. Further, the international nature of USAID's work requires that USAID frequently enter into grants and cooperative agreements with non-governmental organizations (NGOs), and these agreements regularly implicate sub-awardees. It is already articulated and understood that the legal and policy restrictions that attach to prime awardees flow down to sub-awardees, and that prime awardees have the responsibility to ensure that sub-awardees understand these requirements, including those related to the Establishment Clause. For example, a mandatory standard provision included in assistance agreements to U.S. NGOs provides that restrictions imposed on primary recipients apply to subrecipients unless subrecipients are specifically excluded from coverage. Thus, to articulate additional intermediary responsibilities would unnecessarily muddle an otherwise established and cogent regime of intermediary requirements. Finally, USAID will continue to offer training in this area.

Change: None.

Affected regulations: None.

4. Protections for Beneficiaries

USAID does not adopt the discussion of the cross-cutting comments related to protections for beneficiaries discussed in part III of this preamble. Instead, USAID addresses the comments it received on that topic in the following discussion.

a. Beneficiary Notice

Summary of comments: USAID received comments both criticizing and supporting its decision not to require service providers to provide written notice of beneficiary protections. Those in favor of written notice argued that Executive Order 13559 explicitly contemplates such a requirement. These commenters further noted that USAID is the only agency not to require notice. One commenter added that "the value of the beneficiary protections required by the Executive order is greatly reduced if beneficiaries are not made aware that they have such protections," particularly in international scenarios where beneficiaries may be "unfamiliar with our concepts of religious freedom and equality." Some commenters further recommended that USAID not only require written notice, but that such notice be translated into the languages of host countries.

Other commenters agreed with USAID's decision not to require written notice of beneficiary rights. These commenters highlighted the administrative concerns inherent in providing a written notice. Commenters forecasted that additional regulatory burdens would "diminish the ability of the faith-based community and other neighborhood organization[s] to carry out their intended purposes of providing services to those in need in a timely and efficient manner." Other commenters opposed the notice requirement as a matter of fairness, arguing that "the secular agency should have a similar burden to refer to a religious organization" so that "the government is neither favoring nor discriminating against a religious or a secular" organization.

Response: USAID declines to adopt a written notice requirement. The Working Group, in its April 2012 report, set forth model regulations that include a requirement for faith-based organizations to provide beneficiaries with a written notice that informs these beneficiaries that, among other things, they may request an alternative provider if they object to the religious character of the organization.

This report also, however, emphasized that it focused mostly on domestic programs. The report states: "When applying [the guidance contained in this report] to the special circumstances of programs operating in foreign countries, additional considerations may be implicated. Guidance for these programs should be provided, as appropriate, by departments and agencies operating them in consultation with the Department of Justice, rather than by this report, which focuses largely on domestic considerations." These final regulations reflect these consultations.

USAID operates in more than 100 countries, many of which are home to multiple, varied national languages. In many of these countries, all of the beneficiaries of USAID programs speak languages other than English. Also, many of the countries in which USAID operates support an official state religion or incorporate religion into government apparatuses. Accordingly, in a large number of cases, there simply would be no alternative provider that would meet the criteria contemplated by the Executive order and the Working Group report. In the international context, therefore, the notice and referral requirements are unworkable and could place an excessive burden on faith-based organizations. Thus, USAID declines to place such a requirement on these providers. Of course, USAID will continue to update and enhance its training, including its training on beneficiary protections, in accordance with the non-regulatory changes required by Executive Order 13559. USAID also notes that it communicates and promotes important religious freedom messages through separate, targeted programs, such as its democracy, human rights, and vulnerable populations initiatives.

Change: None.

Affected regulations: None.

b. Referrals

Summary of comments: USAID received comments both criticizing and supporting its decision not to require referrals to alternative providers for beneficiaries who object to the religious character of a service provider. Many commenters who supported a referral requirement contended that Executive Order 13559 explicitly contemplates referrals. These commenters further noted that of all the agencies under the purview of Executive Order 13599, "USAID is the only agency that made no effort to fulfill this Executive order mandate." Although these commenters acknowledged the unique challenges of providing referrals in an international context, they nevertheless maintained that these challenges do not "excuse the agency from compliance with the principles of the Establishment Clause, nor with the terms of the Executive order."

Other commenters supported USAID's decision not to require referrals to alternative providers. These commenters highlighted the practical difficulties inherent in the referral process. Specifically, these commenters argued that many faith-based organizations lack the personnel and finances necessary to comply with a complex referral regime. These commenters further highlighted the "extreme and difficult circumstances" unique to international service work, as well as the reality that "there are no alternative providers" in many international settings.

Response: USAID declines to adopt a referral requirement. As noted above, in its April 2012 report, the Working Group emphasized that its model regulations, which encourage referrals to alternative providers, focused mostly on domestic programs. The report states: "When applying [the guidance contained in this report] to the special circumstances of programs operating in foreign countries, additional considerations may be implicated. Guidance for these programs should be provided, as appropriate, by departments and agencies operating them in consultation with the Department of Justice, rather than by this report, which focuses largely on domestic considerations." These final regulations reflect these consultations.

As also noted above, USAID specifically considered the fact that many of the countries in which it operates support an official state religion or incorporate religion into government apparatuses. Accordingly, in a large number of cases, there simply would be no alternative provider that would meet the criteria contemplated by the Executive order and the Working Group report. In the international context, therefore, the notice and referral requirements are unworkable and could place an excessive burden on faith-based organizations. Thus, USAID declines to place such a requirement on these providers.

Change: None.

Affected regulations: None.

5. Political or Religious Affiliation

Summary of comments: USAID did not receive any comments on the issue of political or religious affiliation that were different from or more specific than the applicable cross-cutting comments that are summarized in part III of this preamble.

Response: USAID makes the regulatory changes noted below, consistent with the explanation provided in the applicable cross-cutting comments that are summarized in part III of this preamble.

Change: Revise 22 CFR 205.1(j) to clarify that decisions about awards of Federal financial assistance must be free from political interference or even the appearance of such interference and must be made on the basis of merit, not on the basis of religious affiliation of a recipient organization or lack thereof.

Affected regulations: 22 CFR 205.1(j).

6. Monitoring

Summary of comments: USAID did not receive any comments on the issue of monitoring that were different from or more specific than the applicable cross-cutting comments that are summarized in part III.F of this preamble.

Response: USAID takes compliance with applicable statutes and regulations seriously and performs a number of steps to ensure compliance with these requirements. Such steps can include the following: Training for USAID and implementing partner staff on the requirements, including those relating to the Establishment Clause; post-award conferences with implementing partners to discuss the terms and requirements of their new awards; and regular oversight of compliance with award terms during the life of the award. Finally, USAID's Office of the Inspector General provides independent oversight of all of USAID's programs.

USAID's existing regulations on this topic are already subject to the above processes. While USAID is making changes to its regulations pursuant to this rulemaking, those changes do not increase the burden of ensuring compliance with the regulations. Because USAID is not adopting the requirements for written notice to beneficiaries or referrals to alternative providers, both of which could require the addition of new monitoring processes, USAID believes its existing processes are sufficient to monitor and ensure compliance with USAID's regulations, including these final regulations. USAID will nevertheless continue to enhance its training on compliance with the requirements of the Establishment Clause.

Change: None.

Affected regulations: None.

7. Other Issues

USAID adopts the discussion of Other Issues found in part III.G of this preamble, and provides the additional information on definitions below.

a. Definitions for "Social Service Program" and "Federal Financial Assistance"

USAID does not provide a definition of "social service program" or "Federal financial assistance" because such definitions are not necessary for its regulations. USAID has already included the definitions appropriate for its programs in its existing regulations, found at 22 CFR 205.1(a).

8. USAID Findings & Certifications

Regulatory Flexibility Act

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*), USAID has considered the economic impact of the regulations. USAID certifies that the regulations will not have a significant economic impact on a substantial number of small entities.

Paperwork Burden

These regulations do not impose any new recordkeeping requirements nor do they change or modify an existing information collection activity. Thus, the Paperwork Reduction Act does not apply to these final regulations.

E. Department of Housing and Urban Development

This joint final regulation updates all existing HUD regulations governing the equal participation of faith-based organizations in HUD programs to reflect the new fundamental principles and policymaking criteria in Executive Order 13559. HUD's proposed regulations included amendments to 24 CFR 5.109 to reflect the Executive Order 13559 changes, and amendments to 24 CFR parts 92, 570, 574, 576, 578, 582, 583, and 1003 to replace duplicate faith-based regulations with cross-references to 24 CFR 5.109. The proposed rule also included a sample written notice for beneficiaries. Consistent with the discussion of the final regulation in part II, the cross-cutting responses to public comments in part III, and HUD's agency-specific section in part IV.E, HUD makes the following minor changes:

- HUD adopts the Executive order's approach that decisions about awards of Federal financial assistance must be made on the basis of merit and not an organization's religious character or affiliation, or lack thereof; and language prohibiting discrimination against beneficiaries based on religion, a religious belief, a refusal to hold a religious belief, or a refusal to attend or participate in a religious practice.
- HUD clarifies (1) that beneficiaries may report any suspected violation of these protections, to include any denial of services or benefits by an organization, by contacting or filing a written complaint to HUD or an intermediary, if applicable; (2) which party is responsible for seeking an alternative provider after the faith-based organization has undertaken a reasonable effort to locate an alternative provider; and (3) the recordkeeping requirements for referring organizations. In addition, in HUD's final regulation, HUD uses the term "programs and activities" (and its variants, such as, "programs or activities") which is used in HUD's 2004 final regulation at 69 FR 41712 in place of language in its August 6, 2015, proposed regulation. HUD returns to this language in its final regulation to clarify that the scope of

applicability of HUD's regulations governing the equal participation of faith-based organizations is not changing. HUD also makes edits to the last sentence in 24 CFR 5.109(j) to clarify that a faith-based organization that disposes of real property acquired or improved with Federal financial assistance from HUD, or changes the use of such real property, is subject to the real property use and disposition requirements of 2 CFR part 200, subpart D, and program-specific requirements, as directed by HUD. Lastly, HUD is not amending 24 CFR parts 582 and 583 because these regulations apply only to new or renewing grants under these programs and all grants under these programs will be renewed under the Continuum of Care program at 24 CFR part 578, which is being amended by this final regulation.

HUD at the final rule includes a sample written notice which follows this regulation in the **Federal Register** as appendix E.

Unless otherwise specified, all comments received by HUD are addressed fully in the cross-cutting comment summary section in part III of this preamble and the responses to those comments are adopted by HUD. HUD addresses here the HUD-specific comments not addressed in part III of the preamble, provides agency-specific responses called for in part III, and provides the HUD-specific findings and certifications. This agency-specific discussion is organized in the same manner as part III of the preamble.

In response to HUD's proposed regulation, HUD received 84 public comments. HUD received an additional comment after the deadline and while the comment will not be part of the rule's official docket, HUD has reviewed the comment to determine if issues were raised that were not addressed in comments submitted by the deadline. HUD received comments from providers, religious associations, nonprofit organizations and interested individuals. HUD received many comments in support of the proposed regulation's inclusion of new definitions, the beneficiary protections, and clarification of explicitly religious activities. Commenters also wrote in support of the changes provided to strengthen religious protection for both faith-based providers and beneficiaries. HUD appreciates those comments in support of its rule.

1. Prohibited Use of Direct Federal Financial Assistance

a. Chaplaincy

Response: In response to comments received on the proposed chaplaincy language (see part III.A), HUD is not including chaplaincy language in its final regulation. While HUD agrees that some explicitly religious activities are eligible for certain Federal financial assistance and permitted under the Establishment Clause (and, therefore, not subject to the direct Federal financial assistance restrictions under this final regulation), the subject matter of chaplaincy services has not arisen and is unlikely to arise in HUD-funded programs. None of HUD's financial assistance programs currently provide for the funding of chaplaincy. Therefore, HUD has no need to address chaplaincy in this regulation.

Change: None.

Affected regulations: None.

b. Scope of HUD's Regulations

Summary of comments: A commenter requested clarification from HUD on why "programs, activities, or services" was replaced with "activities" in 24 CFR 5.109(e) of the proposed rule when discussing explicitly religious activities. The commenter wrote that the change is inconsistent with the Executive order and seems to relax restrictions on directly funded organizations.

Response: Except as provided in this final regulation, HUD is not changing the scope of the activities and programs covered by this regulation. HUD is restoring the regulatory language on "programs and activities" (and its variants, such as "programs or activities"), as appropriate, to remove possible confusion about changes to the scope of covered programs and activities. HUD understands the term "activities" to include "services." When the term "service" is used in this regulation, it refers to an activity provided under a HUD program or with Federal financial assistance from HUD.

Change: None. Although the final regulation uses different language than HUD's proposed regulation, the final regulation language is consistent with HUD's 2004 final regulation.

Affected regulations: 24 CFR 5.109(a), (c), (e), (g), (h) and (j).

2. Direct and Indirect Federal Financial Assistance

Response: Consistent with the discussion in part III.B above, HUD maintains the language in 24 CFR 5.109(h) of the proposed rule which applies nondiscrimination requirements to all recipients of Federal financial assistance under HUD programs. This final regulation expands the scope of the nondiscrimination provision in HUD's 2004 final regulation, which applied only to recipients of direct HUD Federal financial assistance. Under this final regulation, recipients of indirect HUD assistance—for example, an owner of a housing unit that receives HUD assistance because of the true private choice of an individual or family to reside at the owner's housing unit, such as under the Housing Choice Voucher Program or other tenant-based rental assistance activities funded under HUD programs (*e.g.,* HOME, HOPWA)—become subject to the nondiscrimination requirements of 24 CFR 5.109(h) at the time the recipient agrees to receive the HUD assistance in accordance with program regulations. Other requirements in this final regulation that apply only to direct Federal financial assistance do not apply to a recipient whose only participation in a Federally funded program or activity is as a recipient of indirect Federal financial assistance.

The following scenario provides an example: The local public housing authority (PHA) accepts an eligible family to the Housing Choice Voucher program in accordance with 24 CFR part 982. Under program regulations, the family may select a private-market housing unit of its choosing and benefit from rental subsidy payments paid to the owner of the unit on the family's behalf. When the family selects a unit and the PHA determines that the unit meets the housing quality standards and other program requirements, the owner of the unit enters into a housing assistance payments (HAP) contract with the PHA to receive the rental subsidy payments. The owner of the unit in this example only becomes subject to the nondiscrimination requirements of 24 CFR 5.109(h) upon execution of the HAP contract. Under this scenario, the owner of the unit, if not otherwise receiving direct Federal financial assistance for the housing, is not subject to other provisions of this regulation. HUD will provide additional guidance on how this regulation applies to indirect Federal financial assistance programs.

Change: None.

Affected regulations: None.

3. Intermediaries

a. Intermediaries

Response: In response to the comments in part III.C on intermediaries, HUD believes its definition of "intermediary" and the provision on intermediary responsibilities at 24 CFR 5.109(f) make clear that an intermediary is responsible for ensuring that all organizations, including faith-based organizations, may participate equally in HUD programs and that all organizations must comply with this regulation. Additionally, under HUD regulations, intermediaries in HUD programs are already responsible for ensuring that subrecipients comply with HUD's requirements, including civil rights related program requirements. Assurance of such compliance is received through the mechanism (*e.g.,* contract, grant, sub-grant, sub-award, or cooperative agreement) whereby HUD funds the intermediary.

Change: None.

Affected regulations: None.

b. State Responsibilities

Summary of comments: Commenters recommended that HUD apply the language it uses to discuss a State's requirement to all entities, *i.e.,* that a State has the "responsibility to ensure that providers are selected, and deliver services, in a manner consistent with the First Amendment's Establishment Clause."

Response: HUD declines to make the suggested edit. The language referenced in this comment is a reminder that State action is bound by constitutional requirements, which cannot be discharged by a State's use of intermediaries.

Change: None.

Affected regulations: None.

4. Protections for Beneficiaries

a. Beneficiary Notice

i. Reporting Violations of the Protections in the Written Notice

Response: In response to comments under part III.D.1 on reporting violations of the protections in the written notice discussion above, HUD is requiring that the written notice also include a statement that beneficiaries may report, which may include reporting by filing a written complaint, suspected violations of the protections of this regulation to either HUD or the intermediary. When the beneficiary reports a violation to HUD, the beneficiary should report the violation to the appropriate HUD office that administers the program (*e.g.,* the Office of Public and Indian Housing, the Office of Community Planning and Development). HUD encourages housing providers to include in their written notice the name of the HUD office that funds the relevant program, and the telephone number for the local HUD office.

If HUD or an intermediary is notified of a suspected violation of the requirements, the information will be handled in the same manner that complaints of possible violations of other program requirements are handled, which may include HUD undertaking some form of investigation and seeking a response from a recipient before making a determination on a complaint that HUD receives. Whenever a recipient of HUD Federal financial assistance fails or refuses to comply with the requirements of this regulation, such failure or refusal constitutes a violation of the requirements under the program in which the recipient is operating, and the recipient will be subject to the remedies available to correct the violation, as provided for under the applicable program, which may include the withholding of HUD assistance.

Furthermore, if a suspected violation of the requirements under this rule concerns possible housing discrimination, then an individual may file a complaint under the Fair Housing Act. A complaint of discrimination based on religion or any other protected characteristic may be investigated and enforced under the Fair Housing Act. Such complaints can be filed through HUD's Office of Fair Housing and Equal Opportunity at: *http://portal.hud.gov/hudportal/HUD?src=/program_offices/fair_housing_equal_opp/online-complaint* or 1–800–669–9777. Hearing- and speech-impaired persons may access this number through TTY by calling the Federal Relay Service at 1–800–877–8339 (this is a toll-free number). A housing provider who is found to have violated the Fair Housing Act may be liable for actual damages, injunctive and other equitable relief, civil penalties, and attorney's fees. HUD encourages housing providers to include these phone numbers in their written notice.

Change: None.

Affected regulations: 24 CFR 5.109(g)(1)(v).

b. Referrals

i. Clarification of Who Is Responsible for Making the Referral

Response: In follow-up to the comments in part III.D.2 asking for clarity regarding who is responsible for making referrals to alternative providers, HUD clarifies in this final regulation that the faith-based organization in receipt of direct Federal financial assistance is responsible for undertaking a reasonable effort to refer a beneficiary that objects to the religious character of a provider to an alternative provider. HUD believes that the recipient or intermediary is in the best situation to know of other providers in the geographic area. If, after a faith-based organization undertakes reasonable efforts to locate an alternative provider, the faith-based organization cannot find an alternative provider then the faith-based organization shall promptly contact either the intermediary or, if there is no intermediary, HUD. If both the faith-based organization and the intermediary are unable to locate an alternative provider, the intermediary must contact HUD for assistance.

Change: None.

Affected regulations: 24 CFR 5.109(g)(3).

ii. Coordinated Entry System and Referral

Summary of comments: One commenter wrote that the referrals required under this rule could complicate the Continuums of Care's (CoC's) coordinated entry systems. The commenter recommended HUD provide guidance on this but not dictate procedures that may hinder effective local coordinated entry efforts or unduly increase the cost burden of service documentation imposed on providers.

Response: By definition, the CoC's centralized or coordinated entry system is designed to coordinate the provision of referrals. See 24 CFR 578.3. HUD believes that CoCs will be able to establish and operate a centralized or coordinated entry system that helps faith-based organizations comply with the requirements of 24 CFR 5.109. HUD recommends that if a CoC program applicant or participant objects to the religious character of a provider within the CoC, and seeks a referral to an alternative provider under 24 CFR 5.109, the faith-based organization should use the coordinated entry system to locate an alternate provider acceptable to the program participant. This may facilitate a quick placement into a project to which the program participant does not object. Coordinated entry processes are developed to facilitate quick and appropriate placements, as well as quickly refer households to another project in instances when the program participant is unable to live in the initial project. In this way, the project is not subjected to an increased burden, the objection and referral will not circumvent the coordinated entry process, and the program participant is prioritized and placed in the next most appropriate setting that meets their needs. HUD plans to provide additional guidance on how the beneficiary referral operates in a coordinated entry system.

Change: None.

Affected regulations: None.

5. Political or Religious Affiliation

Summary of comments: In addition to the comments addressed in part III.E on political influence, HUD also received a comment that said that the terms "interference" and "appearance" are vague and could result in challenges for local governments in awarding grant funds. The commenter wrote that the regulations for creating an action plan under the Housing and Community Development Act contemplate city elected officials holding a hearing with public participation, and given that elected officials are sometimes political, such a meeting would not normally be free of the "appearance" of "political interference."

Response: In response to the part III.E comments, HUD amends its regulatory language at 24 CFR 5.109(c) to align with the Executive order language and to clarify that lack of political or religious affiliation must not be the basis for an awarding decision. As to the request from the commenter that HUD clarify the language on political interference, where a statute or HUD regulation provides a role for elected government officials in the grant process, such as creating an action plan, HUD does not view the elected officials' participation in the process as interference. HUD will provide examples in additional policy guidance or reference materials to clarify "free from political interference or even the appearance of such interference."

Change: HUD is amending 24 CFR 5.109(c) to align with the language in the Executive order.

Affected regulations: 24 CFR 5.109(c).

6. Monitoring

Response: Regarding the comments and response in part III.F about monitoring, HUD is amending its regulations to assist intermediaries and HUD in monitoring referrals. In HUD's sample beneficiary referral request form, HUD included a section for entities to ensure that records are kept when referrals are made to alternative providers. In addition, in HUD's proposed regulation, HUD required that providers notify HUD when referrals are made. The requirement to notify HUD would be burdensome on intermediaries, recipients and subrecipients. HUD believes the use of the sample form complies with the Executive order requirement that HUD have a mechanism to ensure that providers are making the necessary referrals and that beneficiaries are finding alternative providers without the notifying HUD or an intermediary of every referral. For clarity, HUD is adding paragraph (g)(4) in 24 CFR 5.109, consistent with the sample notice, which provides that referring entities must maintain a record of referrals and HUD is removing the requirement that entities notify HUD or the intermediary upon making a successful referral from paragraph (g)(3)(iv) in 24 CFR 5.109. This will make it easier for entities to ensure they are complying with the referral requirement, and make review of records easier for HUD (and intermediaries, as applicable) to monitor for compliance.

Change: HUD is amending 24 CFR 5.109(g)(3)(iv) to remove the requirement to notify HUD or the intermediary if a successful referral is made, and adding 24 CFR 5.109(g)(4).

Affected regulations: 24 CFR 5.109(g)(3)(iv) and (g)(4).

a. Accountability and Transparency

Summary of comments: One commenter wrote that HUD should adopt stronger accountability provisions concerning faith-based organizations to maintain separation of church and state. Commenters also wrote that HUD should ensure faith-based programs do not use HUD programs as an outlet to promote their religion. Another commenter requested that faith-based organizations receiving Federal funds should be required to abide by the same transparency and other requirements as non-faith-based organizations, and requested additional oversight of faith-based organizations.

Response: HUD notes that faith-based organizations must comply with the same transparency requirements as other non-profit recipients. HUD will continue to monitor faith-based and other nonprofit organizations according to the standards of transparency and accountability established by statute, regulation, and other applicable authorities. Establishing the additional requirements requested by the commenters would be beyond the scope of this rulemaking.

Change: None.

Affected regulations: None.

7. Other Issues

a. Definitions for "Social Service Programs" and "Federal Financial Assistance"

Response: Regarding the comments and response in part III.G about the definitions for "social service programs" and "Federal financial assistance," HUD included in its definitions section the "Federal financial assistance" definition from Executive Order 13559 and maintains that definition in this final regulation. HUD does not incorporate a "social service programs" definition, but instead maintains that the scope of the requirements in 24 CFR 5.109 apply to HUD programs and activities consistent with how they applied when HUD first implemented Executive Order 13279.

Change: None.

Affected regulations: None.

b. Definitions of "Faith-Based" and "Religious"

Summary of comments: One commenter requested clarification as to how HUD intends to define "faith-based" and "religious," and whether the terms are synonymous.

Response: HUD, in the proposed rule, replaced references to "religious organization" with "faith-based organization" to remain consistent with language in Executive Orders 13279 and 13559. In keeping with the longstanding approach of the Federal Government, HUD declines to define these terms.

Change: None.

Affected regulations: None.

c. Property Disposition

Summary of comments: One commenter wrote that there is a lack of clarity around disposition of property and buildings assisted with HUD funds, specifically with Community Development Block Grant (CDBG) funds. The commenter also asked whether Government-wide regulations governing real property disposition apply to all assisted properties, or only to properties owned by faith-based organizations, and whether program-specific exceptions, such as those in 24 CFR 570.502(b), apply to all properties and facilities regardless of the status of the owner.

Response: Federal funding of the acquisition or improvement of real property owned by a faith-based organization and the disposition of such property, or a change in use of such property, must be carried out consistent with the Establishment Clause and Free Exercise Clause of the First Amendment. In order to ensure consistency with applicable constitutional standards, the disposition of HUD-funded real property owned by a faith-based organization, or change in use of such real property, is subject to the Government-wide real property disposition requirements at 2 CFR part 200 as well as applicable program-specific requirements. 24 CFR 5.109(j) provides that HUD will provide direction (*i.e.*, guidance on compliance responsibilities of recipients and subrecipients) to faith-based organizations that are subject to both the real property disposition requirements at 2 CFR part 200, subpart D, and HUD program regulations when the real property disposition requirements at 2 CFR part 200, subpart D, and HUD program regulations conflict. A faith-based organization seeking to dispose of such real property or change the use of such real property must seek instructions from HUD regarding its compliance responsibilities because the constitutional standards apply beyond any specified period during which HUD program requirements apply.

Disposition or change in use of real property by an entity that is not a faith-based organization is subject to the requirements that apply to the HUD program that funded acquisition or improvement of the real property. In some HUD programs, the 2 CFR part 200, subpart D, requirements apply to disposition and change in use of such real property. In other programs, however, program-specific requirements replace the real property requirements at 2 CFR part 200, subpart D. When program-specific requirements replace the Government-wide regulations at 2 CFR part 200, subpart D, for real property disposition, 24 CFR 5.109(j) does not change that with respect to entities that are not faith-based organizations. For example, disposition of CDBG-funded real property owned by an entity that is not a faith-based organization is subject to the real property requirements in 24 CFR part 570, but not 2 CFR 200.311.

Change: HUD edits the property disposition paragraph at 24 CFR 5.109(j) to clarify the application of the requirements to disposition of real property owned by faith-based organizations.

Affected regulations: 24 CFR 5.109(j).

d. Assistance by Faith-Based Organizations

Summary of comments: A commenter asked that HUD explain whether a faith-based organization is required to provide assistance that is inconsistent with its religious beliefs if it is the only available provider.

Response: Executive Order 13559 did not address this issue, so this matter is beyond the scope of this regulation.

Change: None.

Affected regulations: None.

8. HUD Findings & Certifications

Consultation With Indian Tribal Governments

In accordance with Executive Order 13175 entitled "Consultation and Coordination With Indian Tribal Governments", issued on November 6, 2000, HUD has consulted with representatives of tribal governments concerning the subject of this rule. HUD, through a letter dated November 19, 2014, provided Indian tribes and Alaska Native Villages the opportunity to comment on the substance of the regulatory changes during the development of the August 6, 2015, proposed rule. HUD received no comments in response to those letters. Additionally, the August 6, 2015, proposed rule provided Indian tribes with an additional opportunity to comment on the proposed regulatory changes.

Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) generally requires an agency to conduct a regulatory flexibility analysis of any regulation subject to notice and comment rulemaking requirements, unless the agency certifies that the regulation will not have a significant economic impact on a substantial number of small entities.

This final regulation provides more access for entities to participate in HUD programs by clarifying requirements for participation in HUD programs. In addition, the final regulation requires that faith-based organizations that carry out activities under a HUD program with direct Federal financial assistance must give beneficiaries and prospective beneficiaries written notice of the protections listed at 24 CFR 5.109(g). This includes notification that the organization must undertake reasonable efforts to identify and refer the beneficiary to an alternative provider to which the beneficiary has no objection, if the beneficiary objects to the religious character of the organization. The organization must inform the beneficiary or prospective beneficiary in writing and the organization would be required to maintain records of the referral.

In HUD's implementation of Executive Order 13559, HUD has made every effort to ensure that the beneficiary protections requirements of the final regulation, including providing written notice and a referral, impose minimum burden and allow maximum flexibility in implementation by providing a sample notice that organizations may provide to beneficiaries informing them of the protections and by not prescribing a specific format for making referrals. HUD estimates it will take no more than 2 hours for providers to familiarize themselves with the notice requirements of this final regulation and print and duplicate an adequate number of written notices for prospective beneficiaries. In addition, HUD estimates an upper limit of $100 for the annual cost of materials (paper, ink, toner) to print multiple copies of the notices. HUD notes that, after the first year, the labor costs associated with compliance will likely decrease significantly because providers will be familiar with the requirements. Because these costs will be borne by every faith-based organization that carries out an activity under a HUD program with direct Federal financial assistance, HUD believes that a substantial number of small entities will be affected by this provision. However, HUD does not believe that the compliance cost estimated per provider per year is significant.

The final regulation will also require faith-based organizations, upon a beneficiary's objection, to make reasonable efforts to identify and refer the beneficiary to an alternative provider to which the beneficiary has no objection. HUD estimates that each referral will require no more than 2 hours of a provider's time. Although HUD does not have any way to determine the number of referrals that will occur in any 1 year, HUD does not believe that referral costs will be significant for small providers.

Paperwork Reduction Act

This final regulation includes a new information collection section, at 24 CFR 5.109(g), which would impose requirements on faith-based organizations that carry out activities under a HUD program with direct Federal financial assistance to give beneficiaries (or prospective beneficiaries) written notice of certain protections described in this final regulation; beneficiaries can provide a written response that may impose a burden under the Paperwork Reduction Act (PRA); and faith-based organizations, or intermediary, must provide a referral if a beneficiary or prospective beneficiary objects to the religious character of the organization. This regulation also requires the retention of records to show that the referral requirements in this rulemaking have been met.

The information collection requirements in the proposed regulations were submitted to OMB under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). In accordance with the PRA, an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information, unless the collection displays a currently valid OMB control number. The information collection requirements of this regulation were assigned OMB Control Number 2535–0122.

Environmental Impact

This final regulation sets forth nondiscrimination standards. Accordingly, under 24 CFR 50.19(c)(3), this final regulation is categorically excluded from environmental review under the National Environmental Policy Act of 1969 (42 U.S.C. 4321).

Catalog of Federal Domestic Assistance

The regulatory amendments contained in this final regulation apply to all HUD assistance programs for which faith-based organizations are eligible to participate. The Catalog of Federal Domestic Assistance (CFDA) number for a particular HUD program may be found on the CFDA Web site at *http://www.cfda.gov.*

F. Department of Justice

Unless otherwise specified, all comments received by DOJ are addressed fully in part III of the preamble. Here, DOJ addresses the DOJ-specific comments not addressed in part III, and provides DOJ-specific findings and certifications. This agency-specific discussion is organized in the same manner as part III. Sections for which DOJ received no agency-specific comments have been omitted.

6. Monitoring

Summary of comments: One commenter strongly supported DOJ's inclusion of sections in the proposed regulations that (1) required recipients of direct Federal financial assistance to sign assurances that they would comply with the regulations, including the nondiscrimination provisions (proposed regulations at 80 FR at 47325 (28 CFR 38.7(a))), and (2) established procedures for monitoring and enforcement (id. (proposed 28 CFR 38.8)). The commenter noted that other Federal agencies did not include similar provisions in their proposed rules and recommended that they consider including sections similar to the ones that DOJ proposed. The commenter further suggested that DOJ change the "may" that appeared in 28 CFR 38.8(a) and (b) of DOJ's proposed regulations to "shall" so that it would be clear that DOJ must squarely fulfill the Executive order's requirements reflecting constitutional obligations to monitor providers.

Response: The significance of 28 CFR 38.8 is that it identifies the particular office within DOJ that has jurisdiction to enforce compliance with the regulation (the Office for Civil Rights (OCR) in DOJ's Office of Justice Programs) and informs beneficiaries, potential beneficiaries, and members of the public where they may file complaints alleging that a recipient of direct Federal financial assistance has failed to abide by the terms of the regulations, and in particular complaints alleging religious discrimination in the delivery of services or benefits. Providing an avenue for filing complaints and specifying which entity is tasked with conducting investigations of noncompliance with the regulations is particularly important because some DOJ programs that receive Federal financial assistance are not subject to program statutes containing provisions that explicitly prohibit recipients from discriminating in the delivery of services or benefits based on religion.

DOJ used "may" in its proposed 28 CFR 38.8 to indicate that the office within DOJ designated to enforce the regulations would have discretion in opening investigations and conducting compliance reviews. The drafters' intention in using "may" was not to absolve DOJ from its responsibility to enforce the regulations but to indicate that the enforcement office was not bound to investigate all complaints, as some complaints on their face may not have merit or the enforcement office may not have the capacity to investigate all complaints based on its staffing and budget. DOJ has resolved this concern in these final regulations by clarifying which office has that responsibility.

Change: DOJ is amending 28 CFR 38.8 to replace each instance of the phrase "The Office for Civil Rights may" with "The Office for Civil Rights is responsible for."

Affected regulations: 28 CFR 38.8(a)–(b).

7. Other Issues

Summary of comments: Some commenters stated that they appreciated DOJ's inclusion of a provision requiring a written notice that informs beneficiaries that they may report "any denials of services or benefits by an organization" (proposed regulations at 80 FR at 47325 (28 CFR 38.6(c)(1)(v))). The commenters expressed concern that the proposed regulations only allow for "written complaint[s]" because that could deter reporting for beneficiaries who are illiterate. The commenters also complained that beneficiaries are directed to report violations to OCR, and recommended instead that beneficiaries have the option of reporting violations to either OCR or the intermediary, so long as the intermediary is required to promptly forward the report to OCR.

Response: 28 CFR 38.6(c)(1)(v) and the model Written Notice of Beneficiary Protections in appendix A of these regulations provide for beneficiaries to report violations to OCR, which is authorized by 28 CFR 38.8 to review practices of recipients of Federal financial assistance and investigate allegations of noncompliance by recipients of Federal financial assistance. Under 28 CFR 38.6(c)(1)(v), and as stated on the model Written Notice of Beneficiary Protections, beneficiaries also have the option of filing a complaint with the intermediary. DOJ's regulations do not require the intermediary to forward any reports filed with the intermediary to OCR. However, as part of its authority to review a recipient's practices, OCR will consider issuing further guidance regarding recipients' administration of complaints.

OCR prefers the complaint to be in writing so as to collect as much information as possible about an allegation of noncompliance and provides accommodations to any individual requiring special assistance for completing a complaint form. These accommodations will be available to assist any beneficiary who wishes to make a report under this regulation. However, OCR agrees that beneficiaries should not always be required to report a violation in writing and will accept other forms of complaint, including oral complaints.

Change: DOJ is amending its regulations to state that beneficiaries may report "an organization's violation of these protections, including any denials of services or benefits," by "contacting *or* filing a written complaint" with OCR or the intermediary (emphasis added).

Affected regulations: 28 CFR 38.6(c)(1)(v).

8. DOJ Findings & Certifications

The following reflect DOJ findings and certifications that are not addressed in part V.

Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) at 5 U.S.C. 603(a) requires agencies to prepare and make available for public comment an initial regulatory flexibility analysis that describes the impact of the proposed rule on small entities. The RFA at 5 U.S.C. 605(b) allows an agency not to prepare an analysis if it certifies that the rulemaking will not have a significant economic impact on a substantial number of small entities. Furthermore, under the Small Business

Regulatory Enforcement Fairness Act of 1996 at section 212(a) (5 U.S.C. 601 note), an agency is required to produce compliance guidance for small entities if a final rule will have a significant economic impact on a substantial number of small entities. The RFA defines small entities as small business concerns, small nonprofit enterprises, or small governmental jurisdictions. 5 U.S.C. 601(6).

Except when the nature of the service provided or exigent circumstances make it impracticable, the regulation requires a faith-based or religious organization administering a program that is supported by direct Federal financial assistance to give written notice to beneficiaries and prospective beneficiaries of their rights under these regulations. These include the right of the beneficiary to object to the religious character of the organization and the obligation of the organization in those circumstances to undertake reasonable efforts to refer the beneficiary to an alternative provider. The organization must inform the beneficiary or prospective beneficiary of those rights in writing and maintain a record of where the beneficiary is referred if a referral is made. If the organization is unable to identify an alternative provider, it must notify the awarding entity of that fact and also maintain a record for review.

DOJ has made every effort to ensure that the notice and referral requirements of the regulations impose minimum burden and allow maximum flexibility in implementation. These regulations include a model Written Notice of Beneficiary Protections in appendix A with the required language that organizations must give to beneficiaries to inform them of their rights and protections, along with a model Beneficiary Referral Request form in appendix B. DOJ estimates it will take no more than two hours for organizations to familiarize themselves with the notice and referral requirements and print and duplicate an adequate number of notice and referral forms for potential beneficiaries. DOJ estimates an upper limit of $50/hour for the labor cost to prepare the forms (or $100 per service provider per year)[25] and an upper limit of $100 for the annual cost of materials (paper, ink, and toner) to print multiple copies of the forms. No commenters objected to DOJ's cost estimates in the NPRM. Although these costs will be borne by faith-based or religious organizations, some of which may be small entities under the RFA, DOJ does not believe that a substantial number of small entities will be affected by this provision. Further, DOJ does not believe that a compliance cost of no more than $200 per organization per year is a significant percentage of an organization's total revenue. In addition, DOJ notes that, after the first year, the labor cost associated with compliance will likely decrease significantly because the organizations will be familiar with the requirements. Accordingly, the Attorney General has reviewed these regulations and by approving them certifies that they will not have a significant economic impact on a substantial number of small entities.

The regulations require faith-based or religious organizations that provide social services, at the beneficiary's request, to make reasonable efforts to identify and refer the beneficiary to an alternative provider to which the beneficiary has no objection based on the provider's religious character. DOJ has provided a model Beneficiary Referral Request form for organizations to use in appendix B. Although DOJ does not have any way to determine the number of referrals that will occur in any one year, DOJ does not believe that referral costs will be appreciable for small faith-based organizations.

Executive Order 12988—Civil Justice Reform

Executive Order 12988 provides that agencies shall draft regulations to avoid drafting errors and ambiguity, minimize litigation, provide clear legal standards for affected conduct, and promote simplification and burden reduction. These regulations meet the applicable standards set forth in sections 3(a) and 3(b)(2) of Executive Order 12988.

Paperwork Reduction Act

These final regulations include a new information collection section, at 28 CFR 38.6(c)(1), which would impose requirements on faith-based organizations that carry out activities under a program supported with direct Federal financial assistance from DOJ to give beneficiaries (or prospective beneficiaries) written notice of certain protections described in these final regulations. A beneficiary who objects to the religious character of the organization may make a written request for a referral to an alternative provider, and faith-based organizations (or, under certain circumstances, an intermediary) must undertake reasonable efforts to provide the referral if the beneficiary makes the request. The regulations also require that the organization retain records to show that it has met the referral requirements. The regulations thus may impose a burden under the Paperwork Reduction Act of 1995 (PRA), 44 U.S.C. 3501 *et seq.*

The information collection requirements in the proposed regulations were submitted to OMB under the PRA. In accordance with the PRA, an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information, unless the collection displays a currently valid OMB control number. 44 U.S.C. 3507(a), 3512. The information collection requirements of these regulations were assigned OMB Control Number 1121–0353.

No comments were received that specifically addressed the paperwork burden analysis of the information collections at the proposed rule stage. As a result, DOJ has not revised the paperwork burden analysis and has not changed these final regulations in connection with the administrative burden.

G. Department of Labor

On August 6, 2015, DOL published proposed regulations (80 FR 47327) as part of its effort to fulfill its responsibilities under Executive Order 13559. The proposal sought to revise DOL's existing regulations on the subject, codified at 29 CFR part 2 subpart D, that were promulgated following the issuance of Executive Order 13279 in 2002.

DOL has amended the final regulations in response to comments relevant to all of the Agencies' proposed regulations for the reasons discussed in part III of the joint preamble, as well as for reasons stated below in this DOL-specific portion of the preamble. DOL endorses part III, and this introduction to the DOL-specific preamble is meant only to elaborate on how part III is reflected in the DOL-specific regulations. Where no comments specific to DOL were received, DOL has excluded those topics from its agency-specific preamble and endorses the discussion of those topics in part III. For ease of reference, this DOL-specific preamble is organized in the same manner as part III.

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[25] This estimate is confirmed by the most recent Bureau of Labor Statistics (BLS) data for occupational categories that seem likely to encompass the employees of faith-based and religious organizations who will have the responsibility to create and distribute the written notice: "Secretaries and Administrative Assistants, Except Legal, Medical, and Executive" (category 43–6014, mean hourly wage of $16.59 in May 2014, *http://www.bls.gov/oes/current/oes436014.htm*); and "Community and Social Service Occupations" (category 21–0000, including occupational categories with mean hourly wages ranging from $15.32 to $28.08 for May 2014, *http://www.bls.gov/oes/current/oes_stru.htm#21-0000*). Even using the highest possible wage from all these categories ($28.08), along with a "load factor" of 1.458 (to account for the cost of employee benefits), the maximum likely labor cost per annum for complying with the written notice requirements would be $28.08/hour × 1.458 × 2.0 hours/year = $81.88/year, well under the estimate of $100/year.

The "load factor" is the wage multiplier used to estimate the total cost to the employer of compensating the employee for both wages *and* benefits (*e.g.*, paid leave, insurance, retirement). According to BLS data as of December 2015 (*http://www.bls.gov/news.release/ecec.t01.htm*), the average benefits for all workers was $10.48/hour, and the average wages and salaries for all workers was $22.88/hour, yielding a total cost to the employer of $33.36/hour. The load factor is thus 33.36 ÷ 22.88 = 1.458.

The significant changes from DOL's proposed regulations are as follows, and are discussed in more detail as necessary in the issue-by-issue discussion and are designed to achieve the following:

- Clarify that the nondiscrimination obligations set forth in 29 CFR 2.33(a) apply to programs funded directly or indirectly by Federal financial assistance consistent with the approach discussed in part III, and deleting the existing 29 CFR 2.33(c) consistent with this clarification.
- Include among the beneficiary protections the requirement that a religious organization may not discriminate against a beneficiary for refusing to hold a religious belief or refusing to attend or participate in religious practices. However, further clarification is added to state that programs funded by indirect financial assistance need not modify those programs to accommodate a beneficiary. These changes are made to maintain greater uniformity with the other Agencies administering Executive Order 13559.
- Consistent with part III, DOL's final regulations limit religious organizations' mandatory reporting to occasions where the organization is unable to identify an alternative provider, instead of mandating reporting any time a referral is made as was proposed in the NPRM, and requires that such reports be made promptly.
- Move the text of the required notice and referral request from within the regulations at 29 CFR 2.35(a) to separate appendices to the regulation.

DOL departs slightly with the regulatory approach of at least some of the other Agencies on some issues due to organizational and programmatic differences, as well as DOL's existing regulations on religious liberty protections and the equal treatment of faith-based organizations. A summary of these, expanded upon in the issue-by-issue discussion below, are as follows:

- Maintaining the language in DOL's existing regulations on chaplaincy.
- Maintaining a proposed regulation detailing the obligations of intermediaries to ensure compliance of non-governmental organizations it selects to provide services with Federal financial assistance.
- Maintaining the proposed "Notice of Beneficiary Religious Liberty Protections" and "Beneficiary Referral Request" form in the regulation, but moving the contents to a new appendix A and B, respectively.
- Consistent with other Agencies who administer Federal financial assistance outside of the United States, the final regulations limit applicability of the notice and referral obligations to social service programs within the United States.

Finally, consistent with the Executive order, part III, and as further detailed below, DOL will also promulgate guidance for DOL-supported social service programs and intermediaries to effectively implement these final regulations, including, but not limited to, monitoring of recipients by intermediaries, reporting on the alternative provider referral system, and posting of the "Notice of Beneficiary Religious Liberty Protections."

1. Prohibited Use of Direct Federal Financial Assistance

Summary of comments: As discussed in part III.A.2, the Agencies received conflicting comments on whether Federal financial assistance for chaplaincy services is constitutionally permissible and, if permissible, whether such services should be subject to direct Federal financial assistance restrictions.

Response: The Agencies agreed in part III.A.2 that that direct Federal funding for religious activities is constitutionally permissible and necessary under limited circumstances, such as for chaplaincy services. DOL's existing regulations at 29 CFR 2.33(b)(3) provide that direct DOL Federal financial assistance may be used for religious activities in limited circumstances, including chaplaincy services, at prisons, detention facilities, and community correction centers and at locations where social service programs involve such a degree of government control over a beneficiary's environment that it would significantly burden the beneficiary's free exercise of religious liberty if DOL or its social service providers do not take affirmative steps. Further, DOL's existing regulations at 29 CFR 2.33(b)(3) already provide that such services may be provided in the same time or location as other DOL-funded activities. DOL declines to amend its chaplaincy provisions because they are sufficiently detailed to explain that chaplaincy services may be constitutionally funded by direct DOL financial assistance and should not be subject to direct Federal financial assistance restrictions because the services are necessary to effectuate beneficiaries' constitutional rights.

Change: None.

Affected regulations: None.

2. Direct and Indirect Federal Financial Assistance

Summary of comments: As discussed in part III, some commenters asked that the regulations clarify that programs funded only by indirect Federal financial assistance may require beneficiaries to participate in explicitly religious activities related to the program, and that such religious activities need not be separated in time or location from the federally funded program. Other commenters took the opposite position—that programs funded by indirect aid should not require participation in religious activities—while also requesting that the prohibitions on discrimination against beneficiaries apply equally to indirect and direct aid programs.

Response: Consistent with both Executive Order 13279 and 13559, the Agencies uniformly agree that: (a) Programs funded by either direct or indirect Federal financial assistance are prohibited from discriminating against beneficiaries because of their religion, religious belief, refusal to hold a religious belief, or refusal to attend or participate in a religious practice, and (b) programs funded by indirect financial assistance need not modify those programs to accommodate a beneficiary's religion. Consistent with the preamble to this final regulation, DOL's existing regulations at 29 CFR 2.33(a) state that social services that are directly funded with Federal financial assistance may not discriminate against applicants or beneficiaries because of their religion or religious belief. DOL's existing regulations at 29 CFR 2.33(b)(1) already state that the separation in time or location requirement for programmatic religious activities only applies to programs funded by direct aid.

Change: DOL removes the qualifier from 29 CFR 2.33(a) that only programs funded by direct Federal financial assistance are subject to the beneficiary nondiscrimination requirement. DOL also adds language clarifying that programs funded by indirect financial assistance need not modify those programs to accommodate a beneficiary's religion. DOL retains its existing language at 29 CFR 2.33(a) providing that the beneficiary nondiscrimination requirement does not preclude parties from using Federal financial assistance from providing religious accommodations in a way that does not violate the Constitution's Establishment Clause. This means that otherwise valid religious accommodations do not violate the religious nondiscrimination requirement in this regulation. DOL also deletes the existing 29 CFR 2.33(c), which was relevant only to the extent that a distinction remained in the nondiscrimination obligations of recipients of direct and indirect Federal financial assistance. Given the reasoning in part III that no such distinction exists, DOL removes this provision from its regulations. It is replaced by a new 29 CFR 2.33(c) regarding intermediaries, discussed in the next section.

Affected regulations: 29 CFR 2.33(a), (c).

3. Intermediaries

Summary of comments: Some commenters recommended that the Agencies' regulations should clarify that intermediaries must ensure recipients' compliance with the Executive order and its implementing regulations or guidance, and urged Agencies to adopt DOJ's proposed regulations requiring intermediaries to "give reasonable assurances that [it] will comply with this [regulation] and effectively monitor the actions of its recipients." See proposed regulations at 80 FR 47325 (28 CFR 38.7(a)).

Response: Like DOJ, DOL sought to clarify the role of intermediaries in ensuring recipients' compliance with the Executive order. Proposed 29 CFR 2.33(d) stated that if an intermediary has authority under a federally-supported contract, grant or agreement to select non-governmental organizations to provide services with Federal financial assistance, the intermediary must ensure that the recipient of the contract, grant or agreement complies with the Executive orders and any implementing regulations or guidance. DOL will maintain the proposed provision in the final regulations because, in addition to the reasons delineated in the DOL proposed regulations for the adoption of the provision, it adequately addresses these commenters' concerns. DOL will also promulgate guidance to intermediaries to assist them in effectively monitoring recipients.

Change: None from DOL's proposed regulations, aside from moving the provision from 29 CFR 2.33(d) as proposed to 29 CFR 2.33(c), given the deletion of the existing § 2.33(c) for reasons previously discussed.

DOL does make additional technical changes, replacing the term "intermediary" as used in the proposed regulatory text with "DOL social service intermediary provider," which is the term that is defined in the regulation at 29 CFR 2.31(f).

Affected regulations: 29 CFR 2.33(c), 2.34(a)(5), 2.35(e).

4. Protections for Beneficiaries

a. Beneficiary Notice

i. Incorporation of Beneficiary Notice and Referral Request Form Into Regulation

Summary of comments: Some commenters recommended that the Agencies incorporate the written notice and beneficiary referral request form into the regulatory text.

Response: DOL included the beneficiary notice in its proposed regulatory text at 29 CFR 2.34(a). As stated in the NPRM, DOL believes that providing a standardized notice on beneficiary rights with contents specified in the regulatory text will lessen DOL social service providers' burden and compliance costs under the Paperwork Reduction Act and provide greater clarity for those charged with compliance as to the precise language required. DOL will also promulgate guidance and additional information on the notice posting requirements, including additional examples of when exigent circumstances would impact a provider's duty to deliver the written notice and when posting the notice would be appropriate.

Change: DOL notes that the placement of the required notice language at the end of 29 CFR 2.34(a) may make it difficult to find, although it did not receive any comments to that effect. Therefore, DOL will amend 29 CFR 2.34(a) by removing the contents of the "Notice of Beneficiary Religious Liberty Protections" to a new appendix A to part 2 and the "Beneficiary Referral Request" form to a new appendix B to part 2. Because the notice states that complaints may be filed with the DOL's Civil Rights Center, the final rule was modified to include that the notice will be made available online at the Civil Rights Center's Web site in addition to DOL's Center for Faith-Based and Neighborhood Partnerships' Web site.

Affected regulations: 29 CFR part 2, subpart D, appendices A and B.

ii. Beneficiary Reporting of Violations

Change: In the proposed regulation, DOL proposed that beneficiaries or prospective beneficiaries would be permitted to report violations to or file written complaints with DOL's Civil Rights Center or a DOL social service intermediary provider. The final regulation differs from the proposed in that for the final regulation, beneficiaries or prospective beneficiaries are directed to report violations or file written complaints with DOL only, not an intermediary. This change was made to simplify the complaint process for beneficiaries and prospective beneficiaries by providing a single, specific point of contact that will be well-equipped to handle any such complaints.

Affected regulations: 29 CFR 2.34(a)(5).

b. Referrals

i. Follow-Up

Summary of comments: Some commenters noted that the Executive order requires each agency to establish a process for determining whether a beneficiary contacted the alternative provider and that DOL's proposed model referral form conflated three distinct follow-up options into two: (1) Follow up with the beneficiary or alternative provider and (2) no follow up. The commenters recommended that DOL follow the approach of other Agencies that presented three distinct options for follow-up: (1) Follow up with the beneficiary; (2) follow up with the alternative provider; and (3) no follow up.

Response: DOL agrees with the commenter that the proposed follow-up options should be treated as three distinct options for greater clarity.

Change: DOL will amend the model referral form by including three distinct options for follow-up: (1) Follow-up with the beneficiary; (2) follow-up with the alternative provider; and (3) no follow-up.

Affected regulations: 29 CFR part 2, subpart D, appendix B.

ii. Referral to Non-Government Funded Provider

Change: DOL's proposed 29 CFR 2.35(c) provided that a referral must be made to a Federally-financed provider in close geographic proximity that offers similar services to the organization making the referral and that if no Federally-financed alternative provider meeting these criteria was available, then a referral should be made to an alternative provider that does not receive Federal financial assistance. To maintain uniformity with the other Federal agencies administering this Executive order, this provision has been revised to eliminate the reference to the alternative provider's nature of funding. The final regulation provides that a referral should be made to an alternative provider that is in close geographic proximity to the organization making the referral, that offers services similar in substance and quality, and that has the capacity to accept additional clients. As the joint preamble states, if a federally-funded alternative provider meets the criteria outlined, then a referral should be made to that provider. However, DOL recognizes that in some geographic areas the only referral available may be to an organization that does not receive Federal financial assistance.

Affected regulations: 29 CFR 2.35(c).

iii. Recordkeeping

Change: DOL's proposed 29 CFR 2.35(d) required an organization to notify the awarding entity any time a referral was made pursuant to the Executive order or when an alternative provider could not be identified. To achieve uniformity with the other federal agencies administering this Executive order, DOL has revised this provision to state that prompt notification is required only when the organization cannot locate an alternative provider. In that case, the organization must promptly notify the awarding entity and maintain a record for review by the awarding entity. When the organization is able to successfully provide a referral, the organization need only maintain a record of the referral for review by the awarding entity.

Affected regulations: 29 CFR 2.35(d).

c. Obligations Related to International Social Service Programs

Summary of comments: One commenter requested clarification that the notice and referral obligations in DOL's proposed 29 CFR 2.34 and 2.35 applied only to domestic social service programs. The commenter noted that the report of the interagency working group tasked with implementing the Executive order, which the Agencies used to develop these regulations, acknowledges that the model regulations and guidance for Agencies focuses on domestic considerations and that the Agencies must consider additional implications when applying the guidance to programs operating in foreign countries.

Response: The grants administered by DOL Agencies are largely domestic, but not entirely so. DOL's Bureau of International Labor Affairs (ILAB), for instance, partners with international organizations, non-governmental organizations, universities, research institutions, and others to advance workers' rights and livelihoods through technical assistance projects, research, and project evaluations. These activities are funded through grants, cooperative agreements, and contracts, and are exclusively international in nature; ILAB has no authority to issue domestic grants.

DOL agrees with the issues raised by the commenter. In the 2012 report issued by the interagency working group tasked with promulgating this regulation, the group stated that "When applying [the guidance contained in this report] to the special circumstances of programs operating in foreign countries, additional considerations may be implicated. Guidance for these programs should be provided, as appropriate, by departments and agencies operating them in consultation with the Department of Justice, rather than by this report, which focuses largely on domestic considerations."

Change: DOL's final regulations includes language stating that the notice and referral obligations contained in its regulations apply only to those recipients administering social service programs administered within the United States.

Affected regulations: 29 CFR 2.34(c), 2.35(f).

5. Political or Religious Affiliation

Summary of comments: DOL received no comments different from or more specific than those summarized in part III of this preamble. The issue raised by commenters generally was whether the proposed regulations were consistent with the relevant provisions of the *COM007*Executive order on this issue.

Response: Proposed 29 CFR 2.39 stated that "Decisions about awards of Federal financial assistance must be free from political interference or even the appearance of such interference and must be made on the basis of merit, not on the basis of religion or religious belief." DOL will amend the final regulations in order to comport with the Executive order language and clarify that the prohibited bias includes prohibition against considering the lack of political or religious affiliation of a non-Federal entity.

Change: The last clause of 29 CFR 2.39 in the final regulation will be modified from "not on the basis of religion or religious belief" to "not on the basis of the religious affiliation of a recipient organization or lack thereof."

Affected regulations: 29 CFR 2.39.

6. Monitoring

Summary of comments and response: Commenters advised the Agencies that they must vigorously monitor and enforce these regulations. DOL will ensure compliance with these final regulations by providing beneficiaries a central office, the Civil Rights Center, to report violations of their rights as explained in the "Notice of Beneficiary Religious Liberty Protections." DOL will also promulgate guidance and develop training for DOL-supported social service programs and intermediaries to effectively implement these final regulations.

Change: None.

Affected regulations: None.

7. Other Issues

a. Definitions

i. "Social Service Program" and "Federal Financial Assistance"

Summary of comments: Some commenters stated that the Agencies should define the terms "social service program" and "Federal financial assistance." Part III opted against a required definition for all Agencies.

Response: As discussed in the proposed regulations, consistent with the Executive order's mandate to adopt regulations on "the distinction between 'direct' and 'indirect' Federal financial assistance," DOL supplemented its existing definition of "Federal financial assistance" in 29 CFR 2.31(a) by adding a sentence to indicate that Federal financial assistance may be direct or indirect and by adding sub-paragraphs (a)(1)–(a)(3) to define the terms "direct Federal financial assistance," "Federal financial assistance provided directly," "indirect Federal financial assistance," and "Federal financial assistance provided indirectly." DOL's existing regulations at 29 CFR 2.31(b) already define the term "social service programs" in a manner that complies with the Executive order, and it thereby maintains this definition.

Change: None.

Affected regulations: None.

8. DOL Findings & Certifications

Executive Orders 12866 and 13563

The Agencies' joint submission relevant to Executive Orders 12866 and 13563 is set forth in part V, General Certifications. DOL joins that portion of the preamble in full. What follows below is a discussion of issues relevant to these Orders specific to DOL's final regulation.

The only provisions of these final regulations likely to impose costs on the regulated community are the requirements that DOL social service providers with a religious affiliation: (1) Give beneficiaries a written notice informing them of their religious liberty rights when seeking or obtaining services supported by direct DOL financial assistance, (2) at the beneficiary's request, make reasonable efforts to identify and refer the beneficiary to an alternative provider to which the beneficiary has no objection, and (3) document such action. To minimize compliance costs on DOL social service providers, DOL provides the exact text of the notice to providers in appendices to its regulations at 29 CFR part 2, subpart D, and will also make the text available through its agency Web site.

An estimate of the cost of providing this notice and referring beneficiaries is discussed in the Paperwork Reduction Act agency-specific section of these final regulations. To minimize compliance costs and allow maximum flexibility in implementation, DOL has elected not to establish a specific format for the referrals required when beneficiaries request an alternative provider. To estimate the cost of the referral provision, DOL would need to know the number of religious direct social service providers funded by DOL annually, the number of beneficiaries who would ask for a referral, and the costs of making the referral and notifying relevant parties of the referral.

Because the notice and referral obligations are new requirements for DOL-funded social service programs, there is no known source of information to quantify precisely the numbers or proportions of program beneficiaries who will request referral to alternative providers. We are not aware of any instances in which a beneficiary of a program of DOL has objected to receiving services from a faith-based organization. There is a possibility that because of these regulations, when beneficiaries start receiving notices of their right to request referral to an alternative service provider, more of them may raise objections. However, our estimate of the number of referrals is also informed by the experience of SAMHSA, which administers beneficiary substance abuse service programs under titles V and XIX of the Public Health Service Act, 42 U.S.C. 290aa *et seq.* and 42 U.S.C. 300x–21 *et seq.* Specifically, 42 U.S.C. 290kk–1 and 300x–65 require faith-based organizations that receive assistance under the Act to provide notice to beneficiaries of their right under the statute to request an alternative service provider. Recipients of assistance must also report all referrals to the appropriate Federal, State, or local government agency that administers the SAMHSA program. To date, SAMHSA has not received any reports of referral by recipients or subrecipients. During the proposed regulation stage, DOL invited interested parties to provide data on which to base estimates of the number of beneficiaries who will request referral to an alternative service provider and the attendant compliance cost service providers may face. No comments addressing this issue were received.

Notwithstanding the absence of concrete data, DOL believes that these regulations are not significant within the meaning of the Executive order because the annual costs associated with complying with the written notice and referral requirements will not approach $100 million.

Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) (RFA) imposes certain requirements with respect to Federal regulations that are subject to the notice and comment requirements of section 553(b) of the Administrative Procedure Act (5 U.S.C. 551 *et seq.*) and which are likely to have a significant economic impact on a substantial number of small entities. Unless an agency determines that a proposal is not likely to have such an impact, section 604 of the RFA requires that the agency present a final regulatory flexibility analysis (FRFA) describing the regulation's impact on small entities and explaining how the agency made its decisions with respect to the application of the regulation to small entities. As described in the Paperwork Reduction Act section of this analysis, during the proposed regulations stage, DOL solicited comment on the compliance costs associated with the notice and referral requirements of this regulation. DOL received no comments that specifically addressed the expected number of referrals or cost of compliance.

As described in regulatory impact analysis section of the proposed regulation, DOL has made every effort to ensure that the disclosure and referral requirements of the proposed regulations impose minimum burden and allow maximum flexibility in implementation by providing the notice for providers to give beneficiaries informing them of their rights and by not proscribing a specific format for making referrals. DOL estimates it will take no more than two minutes for providers to print, duplicate, and distribute an adequate number of disclosure notices for potential beneficiaries. Using the May 2013 Bureau of Labor Statistics hourly mean wage for a Training and Development Specialist of $29.22 results in an estimate of the labor cost per service provider of preparing the notice of approximately $0.97. In addition, DOL estimates an upper limit of $100 for the annual cost of materials (paper, ink, toner) to print multiple copies of the notices. Because these costs will be borne by every small service provider with a religious affiliation, DOL believes that a substantial number of these small entities may be affected by this provision. However, DOL does not believe that a compliance cost of less than $200 per provider per year is a significant percentage of a provider's total revenue. In addition, we note that after the first year, the labor cost associated with compliance will likely decrease significantly because small service providers will be familiar with the requirements.

The final regulations will also require religious social service providers, at the beneficiary's request, to make reasonable efforts to identify and refer the beneficiary to an alternative provider to which the beneficiary has no objection. If an organization is unable to identify an alternative provider, the organization is required to notify the awarding entity and that entity is to determine whether there is any other suitable alternative provider to which the beneficiary may be referred. A DOL social service intermediary may request assistance from DOL in identifying an alternative service provider. DOL estimates that each referral request will require no more than two hours of a Training and Development Specialist's time to process at a labor cost of $29.22 per hour. Although DOL does not have any way to determine the number of referrals that will occur in any one year, based on available data on the SAMHSA program, DOL has no evidence to suggest either this number will be significant or that referral costs will be appreciable for small service providers.

Paperwork Reduction Act

In accordance with the requirements of the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3506(c)(2)), DOL submitted a new information collection request (ICR) to OMB in accordance with 44 U.S.C. 3507(d), contemporaneously with the publication of the notice of proposed rulemaking for OMB's review. OMB assigned the ICR OMB Control Number 1291–0006 on October 15, 2015. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

In addition to requesting comments on the ICR during the proposed regulations stage (pre-clearance), the OMB and DOL specifically requested comments on the ICR that:

- Evaluate whether the collections of information are necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected, and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of IT (*e.g.,* permitting electronic submission of responses).

As instructed by OMB, prior to publication of the final regulations, DOL submitted to OMB a summary of the comments received on the proposed information collections and any changes made in the final regulations in response to the comments. No public comments were received that specifically addressed the paperwork burden analysis of the information collections at the proposed regulations stage. Three comments were submitted, as described elsewhere in this preamble, generally disagreeing with the administrative burden developed by DOL without any attendant data or alternative analysis. As a result, DOL has not revised the paperwork burden analysis and no changes have been made in the final regulations in connection with the administrative burden. One comment was received concerning the appropriate follow-up procedure when a referral is made to an alternative provider. DOL has made a minor revision to the model notice and referral form in response to this comment that does not change the burden estimate.

A copy of this ICR with applicable supporting documentation including a description of the likely respondents, proposed frequency of response, and estimated total burden may be obtained by contacting Michel Smyth by telephone at 202–693–4129, TTY 202–693–8064, (these are not toll-free numbers) or sending an email to *DOL_PRA_PUBLIC@dol.gov.*

DOL's new information collections are contained in 29 CFR 2.34 and 2.35 of these final regulations. DOL's final regulation at 29 CFR 2.34 imposes requirements on religious social service providers to give beneficiaries and potential beneficiaries a standardized notice instructing them of their rights and requiring a written response only in those few cases where a beneficiary requests a referral. DOL determined this notice is not a collection of information subject to OMB clearance under the PRA because the Federal Government has provided the exact text that a provider must use. See 5 CFR 1320.3(c)(2). The beneficiary's response, however, is subject to OMB clearance under the PRA. Care has been taken to obtaining minimal identifying information and providing check boxes for material responses.

DOL's final regulation at 29 CFR 2.35 requires that when a beneficiary or prospective beneficiary of a social service program supported by direct DOL financial assistance objects to the religious character of an organization that provides services under the program, that organization must promptly undertake reasonable efforts to identify and refer the beneficiary to an alternative provider. The referral process entails a collection of information subject to PRA clearance, specifically, informing the beneficiary of a referral to an alternative provider. Under 29 CFR 2.35(d), the organization is required to maintain a record of referrals to alternative providers as well as to notify the awarding entity and maintain a record for review if the organization is unable to identify an alternative provider. That awarding entity is to determine whether there is any other suitable alternative provider to which the beneficiary may be referred. The final regulation at 29 CFR 2.35(e) specifically notes that a DOL social service intermediary provider may request assistance from DOL in identifying an alternative service provider. Further, the Executive order and the final regulations require the relevant government agency to ensure that appropriate and timely referrals are made to an appropriate provider, and that referrals are made in a manner consistent with applicable privacy laws and regulations.

Religious social service providers subject to these requirements must keep records to show they have met the referral requirements. In the case of paper notices, religious social service providers may meet the record-keeping requirements by keeping the bottom portion of the notice. For those religious social service providers that provide notice electronically, the notices must include a means for beneficiaries to request an alternative placement—and follow-up, if desired—that is recorded so that the religious social service providers may retain evidence of compliance with this final regulation. DOL does not estimate the burden of maintaining the records needed to demonstrate compliance with the requirements imposed on the religious social service providers. The record-keeping burden that this regulation adds is so small that, under most programs, it does not measurably increase the burden that already exists under current program and administrative requirements. If, due to the unique nature of a particular program, the record-keeping burden associated with this regulation is large enough to be measurable, that burden will be calculated under the record-keeping and reporting requirements of the affected program and identified in information collection requests that are submitted to OMB for PRA approval. Therefore, DOL does not include any estimate of record-keeping burden in this PRA analysis.

The burden for the information collection provisions of these final regulations can be summarized as follows:

Agency: DOL–OS.

Title of Collection: Grant Beneficiary Referrals.

OMB ICR Reference Number Control Number: 1291–0006.

Affected Public: State and local governments; Private Sector-not-for-profit institutions; and Individuals or Households.

Frequency of Response: On occasion.

Total Estimated Number of Respondents: 38.

Total Estimated Number of Responses: 38.

Total Estimated Annual Burden Hours: 9.

Total Estimated Other Costs: $0.

Effect on Family Life

DOL certifies that these regulations have been assessed according to section 654 of the Treasury and General Government Appropriations Act, enacted as part of the Omnibus Consolidated and Emergency Supplemental Appropriations Act of 1999 (Pub. L. 105–227, 112 Stat. 2681), for its effect on family well-being. It will not adversely affect the well-being of the nation's families. Therefore, DOL certifies that these proposed regulations do not adversely impact family well-being.

H. Department of Veterans Affairs

On August 6, 2015, VA published a proposed regulation (80 FR 47340). VA received 87 comments in response to its proposed regulation. Unless otherwise specified, all comments received by VA are addressed fully in the cross-cutting section in part III and those responses are adopted by VA. VA addresses in this part the VA-specific comments not addressed in part III of the preamble, provides agency-specific response called for in part III, and provides the VA-specific findings and certifications. This agency-specific discussion is organized in the same manner as part III of the preamble. VA does not discuss minor or technical changes that were made to provide greater consistency or simplify the language in the regulations.

1. Prohibited Use of Direct Federal Financial Assistance

Summary of comments: In addition to the applicable cross-cutting comments on the issue of prohibited use of direct Federal financial assistance that are summarized in part III.A of this preamble, VA received the following different or more specific comments. VA received one comment which asserted that taxpayer dollars should not be used to employ religious clergy of any kind within the VA system, or any publicly funded system, and that individuals receiving VA services who desire to participate in religious services may do so at a private location of their choice. VA received one comment regarding the language in proposed 38 CFR 50.1(a) that excluded services "such as chaplaincy services" from the scope of the regulation. The commenter asserted that the language was not specific enough with regard to what services other than chaplaincy might also be excluded.

Response: Regarding the comments asserting that VA should cease the Federal funding of VA chaplaincy services, such comment is outside the scope of this rulemaking. Regarding the comment asking VA to revise 38 CFR 50.1(a) to provide language that is more specific than "such as chaplaincy services," such a change could unnecessarily circumscribe funding permissible under the Establishment Clause. We reiterate the response from part III of this preamble that direct Federal funding for religious activities is constitutionally permissible and necessary under limited circumstances, such as for chaplaincy services; and that the Agencies also believe that they should retain whatever discretion is afforded them by applicable federal law to fund, or not to fund, other such activities that can be publicly funded consistent with the Establishment Clause. The intention of this rulemaking is not to disturb this practice and inclusion of language specifically exempting such services from these rules accomplishes this intent. Therefore, VA does not make any changes based on these comments. VA does, however, revise the language in 38 CFR 50.1(a) to be consistent with such language where it appears in the rules of the Agencies, as indicated in part III.A.2 of the joint preamble.

Change: Revise the last sentence of 38 CFR 50.1(a) to state that "Nothing in this part restricts the VA's authority under applicable Federal law to fund activities, such as the provision of chaplaincy services, that can be directly funded by the Government consistent with the Establishment Clause."

Affected regulations: 38 CFR 50.1(a).

2. Direct and Indirect Federal Financial Assistance

Summary of comments: VA did not receive any comments on the issue of direct and indirect Federal financial assistance that were different from or more specific than the applicable cross-cutting comments that are summarized in part III.B of this preamble.

Response: VA makes the changes noted below consistent with the explanation provided with respect to the applicable cross-cutting comments that are summarized in part III of this preamble.

Change: Revise 38 CFR 50.1 to add paragraph (f) to clarify that any organization that participates in a program funded by Federal financial assistance shall not, in providing services or in outreach activities related to such services, discriminate against a program beneficiary or prospective program beneficiary on the basis of religion, religious belief, a refusal to hold a religious belief, or a refusal to attend or participate in a religious practice. However, an organization that participates in a program funded by indirect financial assistance need not modify its program activities to accommodate a beneficiary who chooses to expend the indirect aid on the organization's program. Revise 38 CFR 50.2 to add paragraph (c) to clarify that providers of "indirect" Federal financial assistance are not required to provide a written notice.

Affected regulations: 38 CFR 50.1(f) and 50.2(c).

3. Intermediaries

Summary of comments: VA did not receive any comments on the issue of intermediaries that were different from or more specific than the applicable cross-cutting comments that are summarized in part III.C of this preamble.

Response: VA does not make any regulatory changes, consistent with the explanation provided in the applicable cross-cutting comments that are summarized in part III of this preamble.

Change: None.

Affected regulations: None.

4. Protections for Beneficiaries

Summary of comments: VA did not receive any comments on the issue of protections for beneficiaries that were different from or more specific than the applicable cross-cutting comments that are summarized in part III.D of this preamble.

Response: VA makes the regulatory changes noted below, consistent with the explanation provided in the applicable cross-cutting comments that are summarized in part III of this preamble. Consistent with the discussion in part III.D.2.f of the preamble, where VA requires individual written notice of beneficiary rights to be provided, grantees and any subgrantees will be required to maintain records of any referrals made, consistent with existing recordkeeping requirements. In circumstances where VA does not require individual written notice of beneficiary rights to be provided, grantees and any subgrantees are not required to maintain a record of any referrals made.

Change: Revise 38 CFR 50.2 to add paragraph (c) to clarify that faith-based or religious organizations providing social services to beneficiaries under a VA program supported by indirect VA financial assistance are not subject to the notice requirements in 38 CFR 50.2. Revise 38 CFR 50.2(a)(1) to clarify that refusal to hold a religious belief, or refusal to attend or participate in a religious practice cannot be a basis for discrimination. Revise 38 CFR 50.2(a)(5) to clarify that beneficiaries may report violations of these protections to, or file a written complaint of any denials of services or benefits with, VA or an intermediary. Revise 38 CFR 50.3(d) to clarify that, when an organization is unable to identify a referral after reasonable efforts, the organization will be required to promptly notify the agency or intermediary. VA anticipates that either the VA program office or the intermediary will provide policy guidance or reference materials so organizations will know who to contact for assistance.

Affected regulations: 38 CFR 50.2(a)(1) and (a)(5), 50.2(c), 50.3(d).

5. Political or Religious Affiliation

Summary of comments: VA did not receive any comments on the issue of political or religious affiliation that were different from or more specific than the applicable cross-cutting comments that are summarized in part III.E of this preamble.

Response: VA does not make any regulatory changes, consistent with the explanation provided in the applicable cross-cutting comments that are summarized in part III of this preamble. However, VA does make changes for purposes of consistency among 38 CFR 54.1, 38 CFR 61.64(a), and 38 CFR 62.62(a).

Change: VA revises the language in 38 CFR 61.64(a) and 38 CFR 62.62(a) to make the language consistent with 38 CFR 51.4, as revised per the discussion in part III.E.3 of this preamble. Specifically, VA removes the last sentences of 38 CFR 61.64(a) and 38 CFR 62.62(a) and replaces them with "Decisions about awards of Federal financial assistance must be free from political interference or even the appearance of such interference and must be made on the basis of merit, not on the basis of religion or religious belief or lack thereof."

Affected regulations: 38 CFR 61.64(a), 62.62(a) (VA).

6. Monitoring

Summary of comments: VA did not receive any comments on the issue of monitoring that were different from or more specific than the applicable cross-cutting comments that are summarized in part III.F of this preamble.

Response: Consistent with the cross-cutting comments in part III of this preamble on the issue of tracking and monitoring compliance with the general requirements of EO 13559, VA does not make any regulatory changes, but will use its resources to develop training and provide policy guidance or reference materials to grantees to ensure that grantees and any subgrantees are aware of the requirements in EO 13559.

Change: None.

Affected regulations: None.

7. Other Issues

Summary of comments: VA did not receive any comments regarding other issues that were different from or more specific than the applicable cross-cutting comments that are summarized in part III.G of this preamble.

Response: Consistent with the applicable cross-cutting comments that are summarized in part III of this preamble, VA revises its regulations to reference the definitions of "Federal financial assistance" and "social service programs" as those terms are defined in EO 13279.

Change: Revise 38 CFR 50.1(a) to reference EO 13279 to define the terms "Federal financial assistance" and "social service programs."

Affected regulations: 38 CFR 50.1(a).

8. VA Findings & Certifications

Effect of Rulemaking

Title 38 of the Code of Federal Regulations, as revised by this final rulemaking, represents VA's implementation of its legal authority on this subject. Other than future amendments to this regulation or governing statutes, no contrary guidance or procedures are authorized. All existing or subsequent VA guidance must be read to conform with this rulemaking if possible or, if not possible, such guidance is superseded by this rulemaking.

Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (44 U.S.C. 3507) requires that VA consider the impact of paperwork and other information collection burdens imposed on the public. Under 44 U.S.C. 3507(a), an agency may not collect or sponsor the collection of information, nor may it impose an information collection requirement unless it displays a currently valid Office of Management and Budget (OMB) control number. See also 5 CFR 1320.8(b)(3)(vi).

This final rule will impose the following new information collection requirements. 38 CFR 50.2 will require faith-based or religious organizations that receive direct VA financial assistance in providing social services to beneficiaries to provide to beneficiaries (or prospective beneficiaries) written notice informing them of certain protections. As required by the 44 U.S.C. 3507(d), VA submitted these information collections to OMB for its review, and the information collection is pending OMB approval. Consistent with the applicable cross-cutting comments in part III of this preamble related to the written notice, VA revises its written notice to indicate that an organization receiving direct financial assistance from VA may not discriminate against a beneficiary on the basis of religion, religious belief, refusal to hold a religious belief, or a refusal to attend or participate in a religious practice. In addition, VA revises its written notice to state that "we cannot guarantee that in every instance an alternate provider will be available."

Notice of OMB approval for this information collection will be published in a future **Federal Register** document. Until VA receives approval from OMB for the information collection, VA will not collect information associated with this rulemaking.

Regulatory Flexibility Act

The Secretary hereby certifies that this final rule will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act, 5 U.S.C. 601–612. Although small entities participating in VA's Grant and Per Diem and and Supportive Services for Veteran Families programs will be affected by this final rule, any economic impact will be minimal. Therefore, pursuant to 5 U.S.C. 605(b), this rulemaking is exempt from the initial and final regulatory flexibility analysis requirements of sections 603 and 604.

Catalog of Federal Domestic Assistance

The Catalog of Federal Domestic Assistance numbers and titles for the programs affected by this document are 64.008, Veterans Domiciliary Care; 64.009, Veterans Medical Care Benefits; 64.024, VA Homeless Providers Grant and Per Diem Program; 64.033, VA Supportive Services for Veteran Families Program.

I. Department of Health and Human Services

On August 6, 2015, HHS published a proposed rule at 80 FR 47272 to amend its "Equal Treatment" regulations at 45 CFR part 87 consistent with Executive Order 13559. The proposed rule also changed the format of the initial rule, which was published in 2004, so that it no longer separates applicable clauses based on grant type (*i.e.,* discretionary grants or formula and block grants). In order to draw out distinctions based on the grant type, the new rule includes an applicability section. This final rule includes those format changes and others that ensure HHS's regulations implement all of the requirements of Executive Order 13279 as amended by Executive Order 13559. HHS received comments from 138 parties. The overwhelming majority of comments received by HHS are addressed in the cross-cutting section in part III of this preamble. HHS adopts all of those responses, unless otherwise noted below. The responses in part III of this preamble also indicate that the Agencies plan to issue non-regulatory policy guidance or reference materials to clarify various issues, such as the prohibition against "explicitly religious" activities. HHS will issue such a non-regulatory guidance that will address that and other issues. We believe such guidance will be the most effective way to address a variety of more detailed matters in the contexts of HHS programs. We will also continue to provide trainings for HHS employees and grantees involved in those programs to which these rules are most typically involved.

While some of the cross-cutting comments addressed in part III of the preamble were not received by HHS, we concur in the resolution of the issues in that part of the preamble. Further, the cross-cutting section of the preamble indicates that the Agencies have agreed to make certain changes to their regulations that were already reflected in HHS's NPRM, and it is therefore not necessary for HHS to make such changes. For example, while some agencies are making changes to the sections of their regulations that address anti-discrimination against beneficiaries, HHS does not need to make those changes because HHS's proposed regulations already included the desired language. An overview of each section of the final regulation text, and the rationale for most of the amendments to the 2004 "Equal Treatment" rules, can be found in the preamble to the proposed rule. Given the preamble to the HHS proposed regulation, and the limited changes to that regulation, this final regulation is limited to discussing the following eight substantive changes to the proposed regulation that was in the NPRM:

First, HHS has revised 45 CFR 87.2, entitled "Applicability," to exempt Child Care and Development Fund (CCDF) grants from the provisions that the NPRM had proposed to make applicable to that program, because beneficiaries in that program already have the option to obtain certificates or vouchers that enable them to choose among available providers. Consequently, it is not necessary to apply the new rules to CCDF grants in order to make alternative providers available to persons with religious objections to faith-based providers. Thus, this final regulation will not apply to CCDF, which is consistent with our past practice.

CCDF programs are governed by an authorizing statute (42 U.S.C. 9858–9858q) and regulation (45 CFR part 98) each of which includes six clauses addressing religious issues, such as participation of religious organizations, nondiscrimination against beneficiaries on the basis of religion and a bar against directly funding religious activity. Since the time that the Equal Treatment rules were initially published in 2004, they have not been applicable to CCDF. Rather, the Administration of Children and Families, Office of Child Care, issued a policy that grantees should follow the rules as a matter of good practice, to the extent that doing so does not conflict with the Child Care and Development Block Grant Act and implementing regulations. See *http://www.acf.hhs.gov/programs/occ/resource/equal-treatment-regulations-for-faith-based-organizations.* Instead of making the Equal Treatment rules apply to CCDF at this point, we believe that continuing to exempt CCDF is more consistent with our prior NPRM proposals to exempt both the Temporary Assistance for Needy Families (TANF) and Substance Abuse and Mental Health Services Administration (SAMHSA) programs. Our NPRM indicated that TANF and SAMHSA would be exempt from these regulations in light of the fact that those two programs already have statutory and regulatory alternative provider requirements, and we are mindful of our goal to minimize the number of new regulations in programs that already comply with new fundamental principles of Executive Order 13559. In this case, CCDF services are primarily funded through certificates and vouchers that already afford beneficiaries a choice of alternative service providers, and all CCDF beneficiaries have the option to receive certificates or vouchers. Consequently, we believe the alternative provider principle would not significantly impact CCDF in addition to the SAMHSA and TANF programs.

Change: 45 CFR 87.2 is amended to exempt CCDF grants from these regulations.

Second, HHS has broadened the religious nondiscrimination clause in 45 CFR 87.3(d) to prohibit not only religious discrimination in the delivery of services, but also the outreach for such services. The new rule states that an organization that participates in any programs funded by financial assistance from an HHS awarding agency shall not discriminate against a program beneficiary or prospective program beneficiary on the basis of religion, a religious belief, a refusal to hold a religious belief, or a refusal to attend or participate in a religious practice, not only when providing services but also when conducting outreach activities related to those services. HHS agrees with the Agencies' rationale for this change, as described in part III.B of the preamble, subtitled "Direct and Indirect Federal Financial Assistance." The change is also consistent with HHS's practice since the inception of the Equal Treatment rules in 2004.

Change: 45 CFR 87.3(d) is amended to state that an organization that participates in any programs funded by financial assistance from an HHS awarding agency shall not, in providing services or in outreach activities related to such services, discriminate against a program beneficiary or prospective program beneficiary on the basis of religion, a religious belief, a refusal to hold a religious belief, or a refusal to attend or participate in a religious practice.

Third, HHS has also revised 45 CFR 87.3(d) to state that an organization that participates in a program funded by indirect financial assistance need not modify its program activities to accommodate a beneficiary who chooses to expend the indirect aid on that organization's program. This change is described in part III.B of the preamble, subtitled "Direct and Indirect Federal Financial Assistance," and we agree with the Agencies' rationale for the change.

Change: 45 CFR 87.3(d) is amended to state that an organization that participates in a program funded by indirect financial assistance need not modify its program activities to accommodate a beneficiary who chooses to expend the indirect aid on the organization's program.

Fourth, HHS has revised the notice, nondiscrimination and alternative provider requirements at 45 CFR 87.3(i)(1), 87.3(i)(1)(i), 87.3(i)(1)(iv)–(v), and 87.3(j) to encompass not only beneficiaries but also prospective beneficiaries. This is consistent with the approach taken by the other agencies. This way, faith-based or religious organizations must provide the notice of beneficiary protections to both beneficiaries and prospective beneficiaries. Further, an HHS-funded social service provider may not discriminate against either a beneficiary or prospective beneficiary on the basis of religion, religious belief, a refusal to hold a religious belief, or a refusal to attend or participate in a religious practice. Finally, either a beneficiary or prospective beneficiary may object to the religious character of an HHS-funded social service provider and request an alternative one.

Change: The notice, nondiscrimination and alternative provider requirements at 45 CFR 87.3(i)(1), 87.3(i)(1)(i), 87.3(i)(1)(iv)–(v) and 87.3(j) are amended to address not only beneficiaries but also prospective beneficiaries.

Fifth, HHS has revised the notice requirement in 45 CFR 87.3(i)(1)(iv) to explicitly state that when a beneficiary or prospective beneficiary objects to the religious character of a faith-based or religious organization that provides social services that entity cannot guarantee that an alternative provider will be available. This is because a faith-based or religious organization that has made a reasonable effort to identify an alternative provider might find that there is no alternative available.

Change: 45 CFR 87.3(i)(1)(iv) is amended to provide that if a beneficiary or prospective beneficiary objects to the religious character of the organization the organization will undertake reasonable efforts to identify and refer the beneficiary to an alternative provider to which the beneficiary has no objection; however, the organization cannot guarantee that in every instance an alternative provider will be available.

Sixth, HHS has revised both the regulations at 45 CFR 87.3(i)(1)(v) and the sample "Written Notice of Beneficiary Protections" in appendix I consistent with the discussion in part III.D.1, entitled "Beneficiary Notice." We and the other agencies agree with the commenter's concern that the final regulations should make clear that each beneficiary's right to report a violation of these protections includes the right to file a complaint of any denials of services or benefits that violates these final regulations. As indicated in the text of the final regulations, such reports and complaints may be made to the HHS office that awarded the grant at issue. In addition, complaints of religious discrimination in some particular programs may also be reported in writing to the HHS Office for Civil Rights (OCR). Those programs and the bases of such complaints are more specifically identified on the OCR Web site at *http://www.hhs.gov/ocr/civilrights/understanding/religion/index.html.*

Change: 45 CFR 87.3(i)(1)(v) and appendix I are amended to state that beneficiaries may file a complaint of any denials of services or benefits that violate these regulations.

Seventh, HHS has revised 45 CFR 87.3(k) consistent with the cross-cutting section of this preamble in part III.D.2 entitled "Referrals." As indicated therein, the obligation that faith-based and religious organizations have under these final regulations to notify their awarding entities of any alternative provider referrals is now more limited than it was in the proposed rule. The final regulations only require faith-based or religious organizations to notify their awarding agencies when they are unable to identify an alternative provider, rather than also requiring them to provide such notice any time they make a referral. The final regulations also now require that these reports be made "promptly." HHS agrees with the commenters who recommended these changes.

Change: 45 CFR 87.3(k) is amended to limit notification to awarding agencies to cases where a referral cannot be made, and to require that such notifications be made promptly.

Eighth, 45 CFR 87.3(k) is also amended to require any organization that is successful in making a referral to an alternative provider, under 45 CFR 87.3(j), to then maintain a record of that referral. As indicated in part III.D.2 of the preamble, subtitled "Notification of Government and timeframe of referral," this requirement is consistent with that which all of the Agencies have adopted. The requirement will enable HHS and intermediary organizations to monitor grantees and subgrantees, respectively, to ensure that they comply with the alterative provider requirement, and is also consistent with HHS cost and accounting regulations at 45 CFR 75.302(a).

Change: 45 CFR 87.3(k) is amended to require that any organization that is successful in making a referral to an alternative provider must maintain a record of the referral.

The remainder of this final regulation is identical to HHS's proposed rule text, with the exception of some additional clarifying changes. HHS addresses below the HHS-specific comments that are not addressed in part III of the joint preamble, using the same subheadings to which these comments would apply in that section. After those comments, HHS-specific regulatory findings and certifications are indicated.

1. Prohibited Use of Direct Federal Financial Assistance

Summary of comments: One commenter requested that further guidance be provided about how "explicitly religious" activity should be interpreted in the context of counseling. The commenter was concerned that a strict interpretation of this provision would "virtually preclude" any religious organization from providing counseling with direct funding from the Federal Government. The commenter stated that it is possible to provide spiritual or religious-based counseling without getting into specific areas of doctrine, and was particularly concerned about the potential for an inadvertent violation of these regulations if a beneficiary asks a federally-funded counselor a question concerning religion. Finally, the commenter was concerned as to whether these rules would prohibit a grace before a meal, particularly in the context of a federally-funded soup kitchen.

Response: HHS intends to issue additional non-regulatory guidance regarding "explicitly religious activities" to address these concerns. We believe that non-regulatory guidance is the more appropriate way to address the wide variety of specific factual contexts in which the bar against explicitly religious activities applies. In general, HHS will note in the guidance that counselors may not encourage or discourage beneficiaries from accepting religious teachings because doing so would constitute an "explicitly religious" activity. Yet, that standard does not prohibit a counselor from making any reference to religion, or responding neutrally to a question that concerns religion.

As to prayer, HHS will note in guidance that attending a federally-supported program does not affect an individual's right to pray. Program beneficiaries may engage in prayer, generally, subject to the same rules designed to prevent material disruption of the program that are applied to any other privately-initiated speech. This is because the bar against use of Federal financial assistance for explicitly religious activities applies to activities, speech, and materials that are generated or controlled by the administrators, instructors, or officials of the federally-financed program. The requirement generally does not apply to the activities of beneficiaries whose speech is not controlled, encouraged, or approved after the fact by program administrators, instructors, or officials.

Change: None.

Affected regulations: None.

2. Direct and Indirect Federal Financial Assistance

Summary of comments: One commenter stated that if child care assistance were not considered "indirect" assistance, it would be difficult to implement the requirements of the NPRM. The commenter stated that some child care providers include religious activities in their programs and it would be difficult to explain and monitor a requirement that such activities be done separately. The commenter was also concerned about whether Federal child care funding reserved for quality improvement activities would be subject to the NPRM.

Response: As HHS has indicated in its first explanation of the changes from the NPRM, HHS has amended 45 CFR 87.2 to exempt Child Care and Development Fund (CCDF) grants from these regulations. CCDF grants are governed by the Child Care and Development Block Grant Act at 42 U.S.C. 9858–9858q and implementing regulation at

45 CFR part 98, each of which includes six provisions that address religious issues. Those implementing regulations at 45 CFR 98.54(d) provide that any funds that a service provider receives through certificates, which is defined to include vouchers, may be spent on sectarian purposes or activities, including sectarian worship or instruction when provided as part of the child care services. Most child care providers serving families who participate in the CCDF program receive their funding through certificates or vouchers, which may therefore be spent on sectarian purposes or activities, and such activities may be part of the Federally-funded program. On the other hand, if a child care service provider receives CCDF funding through grants or contracts, then 45 CFR 98.54(d) prohibits that service provider from spending the funds on any sectarian purpose or activity, including sectarian worship or instruction. While neither the Child Care and Development Block Grant Act nor its implementing regulations at 45 CFR part 98 prohibit grant or contract-funded service providers from incorporating privately-funded religious activity into their Federally-funded programs, the policy of the Administration for Children and Families, Office of Child Care, to which HHS referred in the first explanation of the changes, is that grantees should follow the Equal Treatment regulations at 45 CFR part 87 as a matter of good practice. Section 87.3(b) of these regulations prohibits grant or contract supported service providers from supporting or engaging in any explicitly religious activities (including activities that involve overt religious content such as worship, religious instruction, or proselytization), as part of their Federally-funded child care programs. As the same regulation also states, if an organization conducts such activities, the activities must be offered separately, in time or location, from the programs or services funded with direct financial assistance from the HHS awarding agency, and participation must be voluntary for beneficiaries of the programs or services funded with such assistance. Grant or contract-funded child care providers should follow these same principles as a matter of good practice.

CCDF quality improvement grants are awarded directly to grant recipients, rather than through certificates or vouchers, and therefore religious activities may not be part of the quality improvement services funded by the grants. When the recipient of a quality improvement grant provides secular technical assistance to a faith-based child care provider that provider may still continue to accept certificates or vouchers to administer a program that includes explicitly religious content.

Change: None.

Affected regulations: None.

7. Other Issues

a. Definitions of "Social Service Program" and "Federal Financial Assistance"

Summary of comments: One commenter requested that HHS make clear whether the requirements in the NPRM apply to Medicare and Medicaid. The commenter also asked HHS to explicitly identify all of the HHS programs, grants, and reimbursement structures to which the proposed regulations and alternative provider requirements would apply.

Response: As provided in 45 CFR 87.2, the final regulations will apply to "grants awarded in HHS social service programs governed by the Uniform Administrative Requirements, Cost Principles, and Audit Requirements at 45 CFR part 75." Executive Order 13279 clarifies that the term "social service program" includes "health support services." Because Medicaid entails funding for health support services through grants governed by 45 CFR part 75, these final regulations will apply to the Medicaid program. Yet, Medicaid-funded service providers generally receive payments through "indirect Federal financial assistance" as defined in 45 CFR 87.1(c). Consequently, both the limitation on explicitly religious activities in 45 CFR 87.3(b), and the notice requirement in 45 CFR 87.3(i), would not ordinarily apply to Medicaid-funded service providers. In contrast to Medicaid, these final regulations will not apply to Medicare because it is not a "grant" program.

HHS will ordinarily inform prospective applicants as to whether available grants are governed by these rules in our HHS notices announcing the availability of grant awards. Given the large volume and wide array of grant programs administered by HHS, we believe this is a more practical approach to identifying applicable programs rather than listing all of them in this rule. Consequently, HHS declines the recommendation to do so.

Change: None.

Affected regulations: None.

b. Other Comments

Summary of comments: One commenter noted that the proposed HHS regulations would not amend regulations that currently apply to the Temporary Assistance for Needy Families (TANF), Substance Abuse and Mental Health Services Administration (SAMHSA) or Community Services Block Grant (CSBG) programs. The commenter recommended that the amendments be revised to apply to these programs to the greatest extent possible without creating inconsistencies with their Charitable Choice statutes. The commenter maintained that such a change would further the Executive order's goals of promoting greater clarity and enhancing protections for beneficiaries, and would promote uniformity. For example, the commenter recommended that the regulations governing these three programs be revised to replace the term "inherently religious" with "explicitly religious," and to incorporate the new definitions of "direct" and "indirect." In contrast, the commenter recommended that the beneficiary protections for SAMHSA be kept intact insofar as the Advisory Council recommended they serve as the model for these proposed regulations.

Response: Since 2004, HHS's Equal Treatment regulations have exempted grants governed by the SAMHSA Charitable Choice rule (42 CFR parts 54 and 54a), TANF Charitable Choice rule (45 CFR part 260) and CSBG Charitable Choice rule (45 CFR part 1050). As we indicated in the proposed rule preamble, the SAMHSA and TANF Charitable Choice rules already provide their program beneficiaries with an option to request an alternative provider if they object to the religious character of an HHS-supported social service provider, and that under our proposed rule, programs governed by those two Charitable Choice rules will continue to remain exempt from these regulations. The commenter is correct as to those two exemptions. Yet, the commenter is incorrect that these regulations do not amend CSBG funded programs. CSBG funded programs do not have an alternative provider provision, a fundamental principle in these amendments, and in both the proposed regulation's preamble and the "Applicability" section of the regulation at 45 CFR 87.2 we identified new provisions that make the alternative provider and related requirements applicable to CSBG grants. Additionally, the new definitions of "direct" and "indirect" are among the sections of these regulations that apply to CSBG. In short, HHS has ensured that each of the three programs governed by Charitable Choice rules has an alternative provider option, and kept the SAMHSA beneficiary protections intact without applying these rules to them consistent with the commenter's recommendation.

When making the decisions as to whether other provisions in these regulations should apply to these three Charitable Choice programs, HHS was mindful of the need to avoid conflicts between this regulation and the statutory Charitable Choice provisions that apply to SAMHSA, TANF and CSBG. HHS was also mindful of the need to balance the goals of promoting uniformity and clarity while enhancing beneficiary protections, with the goal of minimizing the number of new regulations in programs that already comply with the fundamental elements of these Executive Order 13559 amendments. We believe that the approach to those three programs in the HHS proposed rule was a reasonable balance between these goals; and as explained earlier in this preamble, Child Care and Development Fund (CCDF) grants should be exempt in the final rule for these reasons. Thus, while we understand and appreciate the commenter's recommendation, we decline the recommendation to apply these regulatory provisions to TANF, SAMHSA and CCDF or apply more of the new provisions to CSBG.

The TANF and SAMHSA programs all remain governed by the Charitable Choice statutes and rules cited above, and CCDF grants remain governed by the Child Care and Development Block Grant Act and its implementing regulations cited at the beginning of the HHS overview of its proposed changes. We intend to state in upcoming sub-regulatory guidance, which will aid grantees in identifying "explicitly religious" activities, that the terms "inherently religious" or "sectarian activities" are used in the three Charitable Choice rules and the CCDF regulations each has the same meaning as the term "explicitly religious" activities as used in these regulations. We also intend to state in our guidance that the distinctions between "direct" and "indirect" forms of funding as used in the TANF and SAMHSA Charitable Choice statutes, and CCDF program regulations, should be defined consistent with the definitions in these regulations.

Change: None.

Affected regulations: None.

8. HHS Findings and Certifications

Executive Orders 12866 and 13563

The Agencies' joint submission relevant to Executive Orders 12866 and 13563 is set forth in part V. HHS joins that portion of the preamble in full, and what follows below is a discussion of issues relevant to HHS's final regulation. As HHS indicated in the NPRM, Executive Orders 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects; distributive impacts; and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, reducing costs, harmonizing rules, and promoting flexibility. Section 3(f) of Executive Order 12866 defines a "significant regulatory action" as an action that is likely to result in a rule that: (1) Has an annual effect on the economy of $100 million or more or adversely and materially affects a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local or Tribal governments or communities (also referred to as "economically significant"); (2) creates serious inconsistency or otherwise interferes with an action taken or planned by another agency; (3) materially alters the budgetary impacts of entitlement grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) raises novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in Executive Order 12866.

HHS believes that the only provisions of this rule likely to impose costs on the regulated community are the requirements that HHS faith-based or religious social service providers: (1) Give beneficiaries a written notice informing them of their religious liberty protections when seeking or obtaining services supported by direct HHS financial assistance, (2) at the beneficiary's request, make reasonable efforts to identify and refer the beneficiary to an alternative provider to which the beneficiary has no objection, and (3) document such action. To minimize compliance costs and allow maximum flexibility in implementation, the final regulations provide the language to be included in the notice directly within the regulations. Additionally, the preamble includes an example of the notice in appendix I to the preamble. An estimate of the burden, in term of the number of hours involved in referring beneficiaries, is discussed in the Paperwork Reduction Act section of this preamble, which cross-references the NPRM preamble.

At this time, there is no known source of information to quantify precisely the numbers or proportions of program beneficiaries who will request referral to alternative providers. HHS is not aware of any instances in which a beneficiary of a program of HHS has objected to receiving services from a faith-based organization. There is however a possibility that HHS will begin to see objections when, as a result of the implementation of these final regulations, beneficiaries begin to receive notices of their option to request referral to an alternative service provider. HHS must therefore estimate that the number of requests for referrals will be one per year for each faith-based or religious organization that receives HHS funding through prime or sub-awards. While a precise estimate is not available, HHS believes that this estimate is reasonable, though it likely errs on the higher end in view of HHS's experience. The Substance Abuse and Mental Health Services Administration (SAMHSA), which administers beneficiary substance abuse service programs under titles V and XIX of the Public Health Service Act, 42 U.S.C. 290aa *et seq.* and 42 U.S.C. 300x–21 *et seq.* Specifically, 42 U.S.C. 290kk–1 and 300x–65, requires faith-based organizations that receive assistance under the Act to provide notice to beneficiaries of their ability under statute to request an alternative service provider. Recipients of assistance must also report all referrals to the appropriate Federal, State, or local government agency that administers the SAMHSA program. To date, SAMHSA has not received any reports of referral by recipients or subrecipients. HHS invites interested parties to provide data on which to base estimates of the number of beneficiaries who will request referral to an alternative service provider and the attendant compliance cost service providers may face.

Notwithstanding the absence of concrete data, HHS believes that this rule is not significant within the meaning of the Executive order because the annual costs associated with complying with the written notice and referral requirements will not approach $100 million.

Regulatory Flexibility Act Analysis

The Regulatory Flexibility Act (RFA) at 5 U.S.C. 603(a) requires agencies to prepare and make available for public comment an initial regulatory flexibility analysis which will describe the impact of the proposed rule on small entities. Section 605 of the RFA allows an agency to certify a rule, in lieu of preparing an analysis, if the rulemaking is not expected to have a significant economic impact on a substantial number of small entities. Furthermore, under the Small Business Regulatory Enforcement Fairness Act of 1996, 5 U.S.C. 801 (SBREFA), an agency is required to produce compliance guidance for small entities if the rule has a significant economic impact on a substantial number of small entities. The RFA defines small entities as small business concerns, small not-for-profit enterprises, or small governmental jurisdictions.

As HHS indicated in the preamble to the proposed rule, under the Initial Regulatory Flexibility Analysis, HHS has made every effort to ensure that the disclosure and referral requirements of the rule impose minimum burden and allow maximum flexibility in implementation by providing in the rule the notice for providers to give beneficiaries informing them of their protections and by not proscribing a specific format for making referrals. HHS believes the conclusions that we provided in the preamble remain accurate, and refer persons to our analysis in that preamble.

Paperwork Reduction Act

The purposes of the Paperwork Reduction Act of 1995 (PRA), 44 U.S.C. 3501 *et seq.*, include minimizing the paperwork burden on affected entities. The PRA requires certain actions before an agency can adopt or revise a collection of information, including publishing a summary of the collection of information and a brief description of the need for and proposed use of the information.

A Federal agency may not conduct or sponsor a collection of information unless it is approved by OMB under the PRA, and displays a currently valid OMB control number, and the public is not required to respond to a collection of information unless it displays a currently valid OMB control number. Also, notwithstanding any other provisions of law, no person shall be subject to penalty for failing to comply with a collection of information if the collection of information does not display a currently valid OMB control number (44 U.S.C. 3512). As we indicated in the NPRM, this rule may require the collection of additional information from beneficiaries should a request for referral to an alternative service provider be received. Consequently, HHS submitted a new information collection request (ICR) to OMB contemporaneously with the publication of the NPRM. OMB assigned Control Number 201507–0990–011 on November 27, 2015.

In the NPRM preamble, HHS provided an assessment of the collection burden that we continue to believe to be accurate. HHS refers to that NPRM preamble for our PRA analysis because it also remains applicable to these final regulations. HHS did not receive any comments concerning the PRA analysis in our preamble to the proposed rule, with the exception of one comment that was sent to the Agencies. That comment maintained that the Agencies' estimate that the referral option will take no more than two hours was without basis, and is among those addressed in the preamble at part III.D.2, under "Referrals," beneath the subheading "Burdens, duties and liability of the referring organization." HHS agrees with the Agencies' conclusion that the two hour referral time estimate, which was indicated in our NPRM preamble, was reasonable and HHS has not changed it.

Effect on Family Life

HHS certifies that these regulations have been assessed according to section 654 of the Treasury and General Government Appropriations Act, enacted as part of the Omnibus Consolidated and Emergency Supplemental Appropriations Act of 1999 (Pub. L. 105–277, 112 Stat. 2681), for its effect on family well-being. The regulations will not adversely affect the well-being of the nation's families. Therefore, HHS certifies that this rule does not adversely impact family well-being.

V. General Certifications

Executive Order 12866 and 13563—Regulatory Impact Analysis and Regulatory Review

Under Executive Order 12866, the head of each agency must determine whether this regulatory action is "significant" and, therefore, subject to the requirements of the Executive order and subject to review by OMB. Section 3(f) of Executive Order 12866 defines a "significant regulatory action" as an action likely to result in a regulation that may

(1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities (also referred to as an "economically significant" regulation);

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impacts of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles stated in Executive Order 12866.

58 FR 51735, 51738 (Oct. 4, 1993).

The heads of the Agencies have determined that this final regulatory action is not a significant regulatory action subject to review by OMB under section 3(f) of Executive Order 12866.

The Agencies have also reviewed these regulations under Executive Order 13563, which supplements and reaffirms the principles, structures, and definitions governing regulatory review established in Executive Order 12866. To the extent permitted by law, section 1(b) of Executive Order 13563 requires that an agency:

(1) Propose or adopt regulations only upon a reasoned determination that their benefits justify their costs (recognizing that some benefits and costs are difficult to quantify);

(2) Tailor its regulations to impose the least burden on society, consistent with obtaining regulatory objectives, and taking into account—among other things and to the extent practicable—the costs of cumulative regulations;

(3) In choosing among alternative regulatory approaches, select those approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity);

(4) To the extent feasible, specify performance objectives, rather than the behavior or manner of compliance that regulated entities must adopt; and

(5) Identify and assess available alternatives to direct regulation, including providing economic incentives—such as user fees or marketable permits—to encourage the desired behavior, or providing information that enables the public to make choices.

76 FR 3821, 3821 (Jan. 21, 2011). Section 1(c) of Executive Order 13563 also requires an agency "to use the best available techniques to quantify anticipated present and future benefits and costs as accurately as possible." Id. The Office of Information and Regulatory Affairs of OMB has emphasized that these techniques may include "identifying changing future compliance costs that might result from technological innovation or anticipated behavioral changes." Memorandum for the Heads of Executive Departments and Agencies, and of Independent Regulatory Agencies, from Cass R. Sunstein, Administrator, Office of Information and Regulatory Affairs, *Re: Executive Order 13563, "Improving Regulation and Regulatory Review"*, at 1

(Feb. 2, 2011), available at *https://www.whitehouse.gov/sites/default/files/omb/memoranda/2011/m11-10.pdf.*

The Agencies are issuing these final regulations upon a reasoned determination that their benefits justify their costs. In choosing among alternative regulatory approaches, the Agencies selected those approaches that maximize net benefits. Based on the analysis that follows, the Agencies believe that these final regulations are consistent with the principles in Executive Order 13563.

The Agencies also have determined that this regulatory action does not unduly interfere with State, local, or tribal governments in the exercise of their governmental functions.

In accordance with Executive Orders 12866 and 13563, the Agencies have assessed the potential costs and benefits, both quantitative and qualitative, of this regulatory action. The potential costs associated with this regulatory action are those resulting from the requirements of Executive Order 13279, as amended by Executive Order 13559, and those determined to be necessary for administering the Agencies' programs and activities.

Small Business Regulatory Enforcement Fairness Act of 1996

These regulations are not a "major rule" as defined by section 251 of the Small Business Regulatory Enforcement Fairness Act of 1996, 5 U.S.C. 804(2). These regulations will not result in an annual effect on the economy of $100 million or more; a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic and export markets.

Unfunded Mandates Reform Act

Section 202(a) of the Unfunded Mandates Reform Act of 1995 (UMRA), 2 U.S.C. 1532(a), requires that a Federal agency determine whether a regulation proposes a Federal mandate that would result in increased expenditures by State, local, or tribal governments, in the aggregate, or by the private sector, of $100 million or more in any single year. If a regulation would result in increased expenditures in excess of $100 million, UMRA requires the agency to prepare a written statement containing, among other things, a qualitative and quantitative assessment of the anticipated costs and benefits of the Federal mandate. The Agencies have reviewed these regulations in accordance with UMRA and determined that the total cost to implement the regulations in any one year will not meet or exceed $100 million. The regulations do not include any Federal mandate that may result in increased expenditure by State, local, and tribal governments in the aggregate of more than $100 million, or increased expenditures by the private sector of more than $100 million. Accordingly, the Agencies certify that UMRA does not require any further action.

Executive Order 13132—Federalism

Section 6 of Executive Order 13132 requires Federal agencies to consult with State entities when a regulation or policy will have substantial direct effects on the States, the relationship between the National Government and the States, or the distribution of power and responsibilities among the various levels of government within the meaning of Executive Order 13132. 64 FR 43255, 43257 (Aug. 10, 1999). Section 3(b) of Executive Order 13132 further provides that Federal agencies may implement a regulation limiting the policymaking discretion of the States only where there is constitutional and statutory authority for the regulation and the regulation is appropriate in light of the presence of a problem of national significance. 64 FR at 43256.

These final regulations do not have a substantial direct effect on the States or the relationship between the National Government and the States, or the distribution of power and responsibilities among the various levels of government, within the meaning of Executive Order 13132. Furthermore, constitutional and statutory authority supports the regulations, and they are appropriate in light of the presence of a problem of national significance.

Executive Order 12372—Intergovernmental Review

These regulations affect programs that are subject to the requirements of Executive Order 12372, 47 FR 30959 (July 16, 1982), and the Agency regulations implementing that order. One of the objectives of Executive Order 12372 is to foster an intergovernmental partnership and a strengthened federalism. Id. at 30959. Executive Order 12372 relies on processes developed by State and local governments for coordination and review of proposed Federal financial assistance. Id.

This document provides early notification of the Agencies' specific plans and actions for the programs affected by these final regulations.

VI. Final Regulations

List of Subjects

2 CFR Part 3474

Accounting, Administrative practice and procedure, Adult education, Aged, Agriculture, American Samoa, Bilingual education, Blind, Business and industry, Civil rights, Colleges and universities, Communications, Community development, Community facilities, Copyright, Credit, Cultural exchange programs, Educational facilities, Educational research, Education, Education of disadvantaged, Education of individuals with disabilities, Educational study programs, Electric power, Electric power rates, Electric utilities, Elementary and secondary education, Energy conservation, Equal educational opportunity, Federally affected areas, Government contracts, Grant programs, Grant programs—agriculture, Grant programs—business and industry, Grant programs—communications, Grant programs—education, Grant programs—energy, Grant programs—health, Grant programs—housing and community development, Grant programs—social programs, Grant administration, Guam, Home improvement, Homeless, Hospitals, Housing, Human research subjects, Indians, Indians—education, Infants and children, Insurance, Intergovernmental relations, International organizations, Inventions and patents, Loan programs, Loan programs social programs, Loan programs—agriculture, Loan programs—business and industry, Loan programs—communications, Loan programs—energy, Loan programs—health, Loan programs—housing and community development, Manpower training programs, Migrant labor, Mortgage insurance, Nonprofit organizations, Northern Mariana Islands, Pacific Islands Trust Territories, Privacy, Renewable Energy, Reporting and recordkeeping requirements, Rural areas, Scholarships and fellowships, School construction, Schools, Science and technology, Securities, Small businesses, State and local governments, Student aid, Teachers, Telecommunications, Telephone, Urban areas, Veterans, Virgin Islands, Vocational education, Vocational rehabilitation, Waste treatment and disposal, Water pollution control, Water resources, Water supply, Watersheds, Women.

6 CFR Part 19

Civil rights, Government contracts, Grant programs, Nonprofit organizations, Reporting and recordkeeping requirements.

7 CFR Part 16

Administrative practice and procedure, Grant programs.

22 CFR Part 205

Foreign aid, Grant programs, Nonprofit organizations.

24 CFR Part 5

Administrative practice and procedure, Aged, Claims, Crime, Government contracts, Grant programs—housing and community development, Individuals with disabilities, Intergovernmental relations, Loan programs—housing and community development, Low and moderate income housing, Mortgage insurance, Penalties, Pets, Public housing, Rent subsidies, Reporting and recordkeeping requirements, Social security, Unemployment compensation, Wages.

24 CFR Part 92

Administrative practice and procedure, Aged, Claims, Crime, Government contracts, Grant programs—housing and community development, Individuals with disabilities, Intergovernmental relations, Loan programs—housing and community development, Low and moderate income housing, Mortgage insurance, Penalties, Pets, Public housing, Rent subsidies, Reporting and recordkeeping requirements, Social security, Unemployment compensation, Wages.

24 CFR Part 570

Administrative practice and procedure, American Samoa, Community development block grants, Grant programs—education, Grant programs—housing and community development, Guam, Indians, Loan programs—housing and community development, Low and moderate income housing, Northern Mariana Islands, Pacific Island Trust Territory, Puerto Rico, Reporting and recordkeeping requirements, Student aid, Virgin Islands.

24 CFR Part 574

Administrative practice and procedure, American Samoa, Community development block grants, Grant programs—education, Grant programs—housing and community development, Guam, Indians, Loan programs—housing and community development, Low and moderate income housing, Northern Mariana Islands, Pacific Island Trust Territory, Puerto Rico, Reporting and recordkeeping requirements, Student aid, Virgin Islands.

24 CFR Part 576

Community facilities, Grant programs—housing and community development, Grant programs—social programs, Homeless, Reporting and recordkeeping requirements.

24 CFR Part 578

Community facilities, Continuum of Care, Emergency solutions grants, Grant programs—housing and community development, Grant programs—social programs, Homeless, Rural housing, Reporting and recordkeeping requirements, Supportive housing programs—housing and community development, Supportive services.

24 CFR Part 1003

Alaska, Community development block grants, Grant programs—housing and community development, Grant programs— Indians, Indians, Reporting and recordkeeping requirements.

28 CFR Part 38

Administrative practice and procedure, Grant programs, Reporting and recordkeeping requirements, Nonprofit organizations.

29 CFR Part 2

Administrative practice and procedure, Claims, Courts, Government employees, Religious Discrimination.

34 CFR Part 75

Accounting, Copyright, Education, Grant programs—education, Inventions and patents, Private schools, Reporting and recordkeeping requirements.

34 CFR Part 76

Accounting, Administrative practice and procedure, American Samoa, Education, Grant programs—education, Guam, Northern Mariana Islands, Pacific Islands Trust Territory, Prisons, Private schools, Reporting and recordkeeping requirements, Virgin Islands.

38 CFR Part 50

Administrative practice and procedure, Alcohol abuse, Alcoholism, Day care, Dental health, Drug abuse, Government contracts, Grant programs—health, Grant programs—veterans, Health care, Health facilities, Health professions, Health records, Homeless, Mental health programs, Per-diem program, Reporting and recordkeeping requirements, Travel and transportation expenses, Veterans.

38 CFR Part 61

Administrative practice and procedure, Alcohol abuse, Alcoholism, Day care, Dental health, Drug abuse, Government contracts, Grant programs—health, Grant programs—veterans, Health, are, Health facilities, Health professions, Health records, Homeless, Mental health programs, Reporting and recordkeeping requirements, Travel and transportation expenses, Veterans.

38 CFR Part 62

Administrative practice and procedure, Day care, Disability benefits, Government contracts, Grant programs—health, Grant programs—housing and community development, Grant programs—Veterans, Health care, Homeless, Housing, Indians—lands, Individuals with disabilities, Low and moderate income housing, Manpower training programs, Medicaid, Medicare, Public assistance programs, Public housing, Relocation assistance, Rent subsidies, Reporting and recordkeeping requirements, Rural areas, Social security, Supplemental Security Income (SSI), Travel and transportation expenses, Unemployment compensation.

45 CFR Part 87

Administrative practice and procedure, Grant programs—social programs, Nonprofit organizations, Public assistance programs.

45 CFR Part 1050

Grant programs—social programs.

Department of Education

For the reasons discussed in the preamble, the Department of Education amends part 3474 of title 2 of the Code of Federal Regulations (CFR) and parts 75 and 76 of title 34 of the CFR as follows:

Title 2—Grants and Agreements

Chapter XXXIV—Department of Education

PART 3474—UNIFORM ADMINISTRATIVE REQUIREMENTS, COST PRINCIPLES, AND AUDIT REQUIREMENTS FOR FEDERAL AWARDS

■ 1. The authority citation for part 3474 continues to read as follows:

Authority: 20 U.S.C. 1221e–3, 3474, and 2 CFR part 200, unless otherwise noted.

■ 2. Add § 3474.15 to read as follows:

§ 3474.15 Contracting with faith-based organizations and nondiscrimination.

(a) This section establishes responsibilities that grantees and subgrantees have in selecting contractors to provide direct Federal services under a program of the Department. Paragraphs (c)(1), (d)(1), and (f) of this section establish requirements that supplement the procurement requirements in 2 CFR 200.313 through 200.326. Every contract between a grantee or subgrantee and a faith-based organization under a program of direct Federal financial assistance must include conditions to implement the requirements in paragraphs (c)(1), (d)(1), and (f) of this section.

(b)(1) A faith-based organization is eligible to contract with grantees and subgrantees, including States, on the same basis as any other private organization, with respect to contracts for which such other organizations are eligible.

(2) In selecting providers of goods and services, grantees and subgrantees, including States, must not discriminate for or against a private organization on the basis of the organization's religious character or affiliation and must ensure that the award of contracts is free from political interference, or even the appearance of such interference, and is done on the basis of merit, not on the basis of religion or religious belief, or lack thereof.

(c)(1) The provisions of 34 CFR 75.532 and 76.532 (Use of funds for religion prohibited), 75.712 and 76.712 (Beneficiary protections: Written notice), and 75.713 and 76.713 (Beneficiary protections: Referral requirements) that apply to a faith-based organization that is a grantee or subgrantee also apply to a faith-based organization that contracts with a grantee or subgrantee, including a State.

(2) The requirements referenced under paragraph (c)(1) of this section do not apply to a faith-based organization that provides goods or services to a beneficiary under a program supported only by indirect Federal financial assistance, as defined in 34 CFR 75.52(c)(3) and 76.52(c)(3).

(d)(1) A private organization that engages in explicitly religious activities, such as religious worship, instruction, or proselytization, must offer those activities separately in time or location from any programs or services supported by a contract with a grantee or subgrantee, including a State, and attendance or participation in any such explicitly religious activities by beneficiaries of the programs and services supported by the contract must be voluntary.

(2) The limitations on explicitly religious activities under paragraph (d)(1) of this section do not apply to a faith-based organization that provides services to a beneficiary under a program supported only by indirect Federal financial assistance, as defined in 34 CFR 75.52(c)(3) and 76.52(c)(3).

(e)(1) A faith-based organization that contracts with a grantee or subgrantee, including a State, may retain its independence, autonomy, right of expression, religious character, and authority over its governance.

(2) A faith-based organization may, among other things—

(i) Retain religious terms in its name;

(ii) Continue to carry out its mission, including the definition, development, practice, and expression of its religious beliefs;

(iii) Use its facilities to provide services without removing or altering religious art, icons, scriptures, or other symbols from these facilities;

(iv) Select its board members and otherwise govern itself on a religious basis; and

(v) Include religious references in its mission statement and other chartering or governing documents.

(f) A private organization that contracts with a grantee or subgrantee, including a State, may not discriminate against a beneficiary or prospective beneficiary in the provision of program goods or services on the basis of religion or religious belief, a refusal to hold a religious belief, or refusal to attend or participate in a religious practice. However, an organization that participates in a program funded by indirect financial assistance need not modify its program activities to accommodate a beneficiary who chooses to expend the indirect aid on the organization's program.

(g) A religious organization's exemption from the Federal prohibition on employment discrimination on the basis of religion, in section 702(a) of the Civil Rights Act of 1964, 42 U.S.C. 2000e–1(a), is not forfeited when the organization contracts with a grantee or subgrantee.

(Authority: 20 U.S.C. 1221e–3 and 3474; 2 CFR Part 200, E.O. 13559)

Title 34—Education

Subtitle A—Office of the Secretary, Department of Education

PART 75—DIRECT GRANT PROGRAMS

■ 3. The authority citation for part 75 continues to read as follows:

Authority: 20 U.S.C. 1221e–3 and 3474, unless otherwise noted.

■ 4. In § 75.52, revise the heading and paragraphs (a)(2), (c), and (e) to read as follows:

§ 75.52 Eligibility of faith-based organizations for a grant and nondiscrimination against those organizations.

(a) * * *

(2) In the selection of grantees, the Department may not discriminate for or against a private organization on the basis of the organization's religious character or affiliation and must ensure that all decisions about grant awards are free from political interference, or even the appearance of such interference, and are made on the basis of merit, not on the basis of religion or religious belief, or the lack thereof.

* * * * *

(c)(1) A private organization that engages in explicitly religious activities, such as religious worship, instruction, or proselytization, must offer those activities separately in time or location from any programs or services supported by a grant from the Department, and attendance or participation in any such explicitly religious activities by beneficiaries of the programs and services supported by the grant must be voluntary.

(2) The limitations on explicitly religious activities under paragraph (c)(1) of this section do not apply to a faith-based organization that provides services to a beneficiary under a program supported only by "indirect Federal financial assistance."

(3) For purposes of 2 CFR 3474.15, 34 CFR 75.52, 75.712, 75.713, 75.714, and appendix A to this part, the following definitions apply:

(i) Direct Federal financial assistance means that the Department, a grantee, or a subgrantee selects a provider and either purchases goods or services from that provider (such as through a contract) or awards funds to that provider (such as through a grant, subgrant, or cooperative agreement) to carry out services under a program of the Department. Federal financial assistance shall be treated as direct unless it meets the definition of "indirect Federal financial assistance."

(ii) Indirect Federal financial assistance means that the choice of a service provider under a program of the Department is placed in the hands of the beneficiary, and the cost of that service is paid through a voucher, certificate, or other similar means of government-funded payment. Federal financial assistance provided to an organization is "indirect" under this definition if—

(A) The government program through which the beneficiary receives the voucher, certificate, or other similar means of government-funded payment is neutral toward religion;

(B) The organization receives the assistance as the result of the decision of the beneficiary, not a decision of the government; and

(C) The beneficiary has at least one adequate secular option for use of the voucher, certificate, or other similar means of government-funded payment.

Note to paragraph (c)(3): The definitions of "direct Federal financial assistance" and "indirect Federal financial assistance" do not change the extent to which an organization is considered a "recipient" of "Federal financial assistance" as those terms are defined under 34 CFR parts 100, 104, 106, and 110.

* * * * *

(e) A private organization that receives any Federal financial assistance under a program of the Department shall not discriminate against a beneficiary or prospective beneficiary in the provision of program services or in outreach activities on the basis of religion or religious belief, a refusal to hold a religious belief, or refusal to attend or participate in a religious practice. However, an organization that participates in a program funded by indirect financial assistance need not modify its program activities to accommodate a beneficiary who chooses to expend the indirect aid on the organization's program.

* * * * *

(Authority: 20 U.S.C. 1221e–3 and 3474, E.O. 13559)

■ 5. Add §§ 75.712, 75.713, and 75.714 to subpart F before the undesignated center heading "Reports" to read as follows:

§ 75.712 Beneficiary protections: Written notice.

(a) A faith-based organization that receives a grant, subgrant, or contract under a program of the Department supported in whole or in part by direct Federal financial assistance must give written notice to a beneficiary or prospective beneficiary of certain protections. This notice must state that:

(1) The organization may not discriminate against a beneficiary or prospective beneficiary on the basis of religion or religious belief, a refusal to hold a religious belief, or refusal to attend or participate in a religious practice;

(2) The organization may not require a beneficiary to attend or participate in any explicitly religious activities that are offered by the organization, and any participation by the beneficiaries in such activities must be purely voluntary;

(3) The organization must separate in time or location any privately funded explicitly religious activities from activities supported by direct Federal financial assistance;

(4) If a beneficiary or prospective beneficiary objects to the religious character of the organization, the organization will undertake reasonable efforts to identify and refer the beneficiary to an alternative provider to which the beneficiary has no objection; and

(5) A beneficiary or prospective beneficiary may report a violation of these protections to, or file a written complaint regarding a denial of services or benefits with, the subgrantee, grantee, or Department that made the award under which the violation or denial occurred.

(b)(1) A faith-based organization that receives a grant, subgrant, or contract under a program of the Department must provide beneficiaries or prospective beneficiaries with the written notice required under paragraph (a) of this section prior to the time they enroll in or receive services from the organization.

(2) When the nature of the services provided or exigent circumstances make it impracticable to provide the written notice in advance of the actual services, the organization must advise beneficiaries of their protections at the earliest available opportunity.

(c) The notice that a faith-based organization must use to notify beneficiaries or prospective beneficiaries of their rights under paragraph (a) of this section is specified in appendix A to this part.

(Authority: 20 U.S.C. 1221e–3 and 3474, E.O. 13559)

[Approved by the Office of Management and Budget under control number 1895–0001]

§ 75.713 Beneficiary protections: Referral requirements.

(a) If a beneficiary or prospective beneficiary of a program of the Department supported in whole or in part by direct Federal financial assistance objects to the religious character of a faith-based organization that provides services under the program, that organization must promptly undertake reasonable efforts to identify and refer the beneficiary or prospective beneficiary to an alternative provider to which the beneficiary or prospective beneficiary has no objection.

(b)(1) A faith-based organization may satisfy the requirement in paragraph (a) of this section by referring a beneficiary or prospective beneficiary to another faith-based organization if the beneficiary or prospective beneficiary does not object to that provider.

(2) If the beneficiary or prospective beneficiary requests a secular provider, and one is available, the faith-based organization must make a referral to that provider.

(c) The faith-based organization must make a referral to an alternative provider that—

(1) Is in reasonable geographic proximity to the location where the beneficiary or prospective beneficiary is receiving or would receive services (except for services provided by telephone, internet, or similar means);

(2) Offers services that are similar in substance and quality to those offered by the organization; and

(3) Has the capacity to accept additional beneficiaries.

(d)(1) When a faith-based organization makes a referral to an alternative provider, the organization must maintain a record of the referral in its grant records, including the date of the referral, the name of the alternative provider, its address, and contact information for the alternative provider;

(2) When a faith-based organization determines that it is unable to identify an alternative provider, the organization must promptly notify the subgrantee, grantee, or Department that made the award under which the referral could not be made. If the organization is unable to identify an alternative provider, the subgrantee, grantee, or Department that made the award under which the referral could not be made must determine whether there is any other suitable alternative provider to which the beneficiary or prospective beneficiary may be referred. If the entity that made the award under which the referral could not be made cannot make a referral, that entity must promptly notify the grantee or the Department, as appropriate, and the grantee or the Department must determine whether a suitable referral can be made.

(Authority: 20 U.S.C. 1221e–3 and 3474, E.O. 13559)

[Approved by the Office of Management and Budget under control number 1895–0001]

§ 75.714 Subgrants, contracts, and other agreements with faith-based organizations.

If a grantee under a discretionary grant program of the Department has the authority under the grant to select a private organization to provide services supported by direct Federal financial assistance under the program by subgrant, contract, or other agreement, the grantee must ensure compliance with applicable Federal requirements governing contracts, grants, and other agreements with faith-based organizations, including, as applicable, §§ 75.52, 75.532, and 75.712–75.713, appendix A to this part, and 2 CFR 3474.15. If the intermediary is a nongovernmental organization, it retains all other rights of a nongovernmental organization under the program's statutory and regulatory provisions.

(Authority: 20 U.S.C. 1221e–3 and 3474, E.O. 13559)

■ 6. Appendix A to Part 75 is added to read as follows:

Appendix A to Part 75—Form of Required Notice to Beneficiaries

A faith-based organization that serves beneficiaries under a program funded in whole or in part by direct Federal financial assistance from the U.S. Department of Education must provide the following notice, or an accurate translation of this notice, to a beneficiary or prospective beneficiary of the program.

(Approved by the Office of Management and Budget under control number 1895–0001)

NOTICE OF BENEFICIARY RIGHTS
Name of Organization:
Name of Program:
Contact Information for Program Staff: (name, phone number, and email address, if appropriate):

Because this program is supported in whole or in part by direct Federal financial assistance from the U.S. Department of Education, we are required to let you know that—

(1) We may not discriminate against you on the basis of religion or religious belief, a refusal to hold a religious belief, or refusal to attend or participate in a religious practice;

(2) We may not require you to attend or participate in any explicitly religious activities that are offered by us, and any participation by you in such activities must be purely voluntary;

(3) We must separate in time or location any privately funded explicitly religious activities from activities supported under this [insert the grant, subgrant, or contract name and identifying number of this award to the faith-based organization] by direct Federal financial assistance under this program;

(4) If you object to the religious character of our organization, we will undertake reasonable efforts to identify and refer you to an alternative provider to which you have no objection; however, we cannot guarantee that, in every instance, an alternative provider will be available; and

(5) You may report violations of these protections to, or file a written complaint regarding a denial of services or benefits under this award with, [Insert the name of the entity that awarded the grant, subgrant, or contract under which the violation occurred].

We must give you this written notice before you enroll in our program or receive services from the program.

BENEFICIARY REFERRAL REQUEST

If you object to receiving services from us based on the religious character of our organization, please complete this form and return it to the program contact identified above. If you object, we will make reasonable efforts to refer you to another service provider. With your consent, we will follow up with you or the organization to which you were referred to determine whether you contacted that organization.

Please check if applicable:
( ) I want to be referred to another service provider.

If you checked above that you wish to be referred to another service provider, please check one of the following:
( ) Please follow up with me.
Name:
Best way to reach me: (phone/address/email):
( ) Please follow up with the service provider to which I was referred.
( ) Please do not follow up.

—End of Form—

(Authority: 20 U.S.C. 1221e–3 and 3474, E.O. 13559)

PART 76—STATE-ADMINISTERED PROGRAMS

■ 7. The authority citation for part 76 continues to read as follows:

Authority: 20 U.S.C. 1221e–3 and 3474, unless otherwise noted.

■ 8. In § 76.52, revise the section heading, and paragraphs (a)(2), (c), and (e) to read as follows:

§ 76.52 Eligibility of faith-based organizations for a subgrant and nondiscrimination against those organizations.

(a) * * *

(2) In the selection of subgrantees and contractors, States may not discriminate for or against a private organization on the basis of the organization's religious character or affiliation and must ensure that all decisions about subgrants are free from political interference, or even the appearance of such interference, and are made on the basis of merit, not on the basis of religion or religious belief or a lack thereof.

* * * * *

(c)(1) A private organization that engages in explicitly religious activities, such as religious worship, instruction, or proselytization, must offer those activities separately in time or location from any programs or services supported by a subgrant from a State under a State-administered program of the Department, and attendance or participation in any such explicitly religious activities by beneficiaries of the programs and services supported by the subgrant must be voluntary.

(2) The limitations on explicitly religious activities under paragraph (c)(1) of this section do not apply to a faith-based organization that provides services to a beneficiary under a program supported only by "indirect Federal financial assistance."

(3) For purposes of 2 CFR 3474.15, 34 CFR 76.52, 76.712, 76.713, and 76.714, the following definitions apply:

(i) Direct Federal financial assistance means that the Department, grantee, or subgrantee selects a provider and either purchases services from that provider (such as through a contract) or awards funds to that provider (such as through a grant, subgrant, or cooperative agreement) to carry out services under a program of the Department. Federal financial assistance shall be treated as direct unless it meets the definition of "indirect Federal financial assistance."

(ii) Indirect Federal financial assistance means that the choice of a service provider under a program of the Department is placed in the hands of the beneficiary, and the cost of that service is paid through a voucher, certificate, or other similar means of government-funded payment. Federal financial assistance provided to an organization is "indirect" under this definition if—

(A) The government program through which the beneficiary receives the voucher, certificate, or other similar means of government-funded payment is neutral toward religion;

(B) The organization receives the assistance as the result of the decision of the beneficiary, not a decision of the government; and

(C) The beneficiary has at least one adequate secular option for use of the voucher, certificate, or other similar means of government-funded payment.

Note to paragraph (c)(3): The definitions of "direct Federal financial assistance" and "indirect Federal financial assistance" do not change the extent to which an organization is considered a "recipient" of "Federal financial assistance" as those terms are defined under 34 CFR parts 100, 104, 106, and 110.

* * * * *

(e) A private organization that receives any Federal financial assistance under a program of the Department shall not discriminate against a beneficiary or prospective beneficiary in the provision of program services or in outreach activities on the basis of religion or religious belief, a refusal to hold a religious belief, or refusal to attend or participate in a religious practice. However, an organization that participates in a program funded by indirect financial assistance need not modify its program activities to accommodate a beneficiary who chooses to expend the indirect aid on the organization's program.

* * * * *

(Authority: 20 U.S.C. 1221e–3 and 3474, E.O. 13559)

■ 9. Add §§ 76.712, 76.713, and 76.714 to subpart G before the undesignated center heading "Reports" to read as follows:

§ 76.712 Beneficiary protections: Written notice.

(a) A faith-based organization that receives a grant, subgrant, or contract under a State-administered program of the Department supported in whole or in part by direct Federal financial assistance must give written notice to a beneficiary or prospective beneficiary of certain protections. This notice must state that:

(1) The organization may not discriminate against a beneficiary or prospective beneficiary on the basis of religion, or religious belief, a refusal to hold a religious belief, or refusal to attend or participate in a religious practice;

(2) The organization may not require a beneficiary to attend or participate in any explicitly religious activities that are offered by the organization, and any participation by the beneficiaries in such activities must be purely voluntary;

(3) The organization must separate in time or location any privately funded explicitly religious activities from activities supported by direct Federal financial assistance;

(4) If a beneficiary or prospective beneficiary objects to the religious character of the organization, the organization will undertake reasonable efforts to identify and refer the beneficiary to an alternative provider to which the beneficiary has no objection; and

(5) A beneficiary or prospective beneficiary may report violations of these protections to, or may file a written complaint regarding a denial of services or benefits, with the State agency administering the program or subgrantee that made the award under which the violation occurred.

(b)(1) A faith-based organization that receives a subgrant or contract under a State-administered program of the Department must provide beneficiaries with the written notice required under paragraph (a) of this section prior to the time they enroll in or receive services from the organization.

(2) When the nature of the services provided or exigent circumstances make it impracticable to provide the written notice in advance of the actual services, the organization must advise beneficiaries of their protections at the earliest available opportunity.

(c) The notice that a faith-based organization must use to notify beneficiaries or prospective beneficiaries of their rights under paragraph (a) of this section is specified in appendix A to part 75.

(Authority: 20 U.S.C. 1221e–3 and 3474, E.O. 13559)

[Approved by the Office of Management and Budget under control number 1895–0001]

§ 76.713 Beneficiary protections: Referral requirements.

(a) If a beneficiary or prospective beneficiary of a State-administered program of the Department supported in whole or in part by direct Federal financial assistance objects to the religious character of a faith-based organization that provides services under the program, that organization must promptly undertake reasonable efforts to identify and refer the beneficiary to an alternative provider to which the beneficiary or prospective beneficiary has no objection.

(b)(1) A faith-based organization may satisfy the requirement in paragraph (a) of this section by referring a beneficiary or prospective beneficiary to another faith-based organization if the beneficiary or prospective beneficiary does not object to that provider.

(2) If the beneficiary or prospective beneficiary requests a secular provider, and one is available, the faith-based organization must make a referral to that provider.

(c) The faith-based organization must make a referral to an alternative provider that—

(1) Is in reasonable geographic proximity to the location where the beneficiary or prospective beneficiary is receiving or would receive services (except for services provided by telephone, internet, or similar means);

(2) Offers services that are similar in substance and quality to those offered by the organization; and

(3) Has the capacity to accept additional beneficiaries.

(d)(1) When a faith-based organization makes a referral to an alternative provider, the organization must maintain a record of the referral in its grant records, including the date of the referral, the name of the alternative provider, its address, and contact information for the alternative provider.

(2) When the organization determines that it is unable to identify an alternative provider, the organization must promptly notify the State or subgrantee that made the award under which the referral could not be made. If the organization is unable to identify an alternative provider, the State agency or subgrantee that made the award under which the referral could not be made must determine whether there is any other suitable alternative provider to which the beneficiary or prospective beneficiary may be referred. If the entity that made the award under which the referral could not be made cannot make a referral, that entity must promptly notify the grantee or the Department, as appropriate, and the grantee or the Department must determine whether a suitable referral can be made.

(Authority: 20 U.S.C. 1221e–3 and 3474, E.O. 13559)

[Approved by the Office of Management and Budget under control number 1895–0001]

§ 76.714 Subgrants, contracts, and other agreements with faith-based organizations.

If a grantee under a State-administered program of the Department has the authority under the grant or subgrant to select a private organization to provide services supported by direct Federal financial assistance under the program by subgrant, contract, or other agreement, the grantee must ensure compliance with applicable Federal requirements governing contracts, grants, and other agreements with faith-based organizations, including, as applicable, §§ 76.52, 76.532, and 76.712–76.713 and 2 CFR 3474.15. If the intermediary (pass-through) is a nongovernmental organization, it retains all other rights of a nongovernmental organization under the program's statutory and regulatory provisions.

(Authority: 20 U.S.C. 1221e–3 and 3474, E.O. 13559)

DEPARTMENT OF HOMELAND SECURITY

■ 10. For the reasons set forth above, 6 CFR chapter I is amended by adding part 19 to read as follows:

PART 19—NONDISCRIMINATION IN MATTERS PERTAINING TO FAITH-BASED ORGANIZATIONS

Sec.
19.1 Purpose.
19.2 Definitions.
19.3 Equal ability for faith-based organizations to seek and receive financial assistance through DHS social service programs.
19.4 Explicitly religious activities.
19.5 Nondiscrimination requirements.
19.6 Beneficiary protections: Written notice.
19.7 Beneficiary protections: Referral requirements.
19.8 Independence of faith-based organizations.
19.9 Exemption from Title VII employment discrimination requirements.
19.10 Commingling of Federal assistance.
Appendix A to Part 19 — Model Written Notice to Beneficiaries

Authority: 5 U.S.C. 301; Pub. L. 107–296; E.O. 13279, 67 FR 77141; E.O. 13403, 71 FR 28543; E.O. 13498, 74 FR 6533; and E.O. 13559, 75 FR 71319.

§ 19.1 Purpose.

It is the policy of the Department of Homeland Security (DHS) to ensure the equal treatment of faith-based organizations in social service programs administered or supported by DHS or its component agencies, enabling those organizations to participate in providing important social services to beneficiaries. The equal treatment policies and requirements contained in this part are generally applicable to faith-based organizations participating or seeking to participate in any such programs. More specific policies and requirements regarding the participation of faith-based organizations in individual programs may be provided in the statutes, regulations, or guidance governing those programs, such as regulations in title 44 of the Code of Federal Regulations. DHS or its components may issue policy guidance and reference materials at a future time with respect to the applicability of this policy and this part to particular programs.

§ 19.2 Definitions.

For purposes of this part:

Beneficiary means an individual recipient of goods or services provided as part of a social service program specifically supported by Federal financial assistance. "Beneficiary" does not mean an individual who may incidentally benefit from Federal financial assistance provided to a State, local, or Tribal government, or a private nonprofit organization. Except where expressly noted or where inapplicable, "beneficiary" includes a prospective beneficiary.

Direct Federal financial assistance or *Federal financial assistance provided directly* means that the government or an intermediary (*e.g.,* State, local, or Tribal government, or nongovernmental organization) selects the provider and either purchases services from that provider (*e.g.,* via a contract) or awards funds to that provider to carry out a service (*e.g.,* through a grant or cooperative agreement). In general, Federal financial assistance shall be treated as direct, unless it meets the definition of "indirect Federal financial assistance" or "Federal financial assistance provided indirectly".

Explicitly religious activities include activities that involve overt religious content such as worship, religious instruction, or proselytization. An activity is not explicitly religious merely because it is motivated by religious faith.

Financial assistance means assistance that non-Federal entities receive or administer in the form of grants, sub-grants, contracts, subcontracts, prime awards, loans, loan guarantees, property, cooperative agreements, food, direct appropriations, or other assistance, including materiel for emergency response and incident management. Financial assistance includes assistance provided by DHS, its component organizations, regional offices, and DHS financial assistance administered by intermediaries such as State, local, and Tribal governments, such as formula or block grants.

Indirect Federal financial assistance or *Federal financial assistance provided indirectly* means that the choice of the service provider is placed in the hands of the beneficiary, and the cost of that service is paid through a voucher, certificate, or other similar means of government-funded payment. For purposes of this part, sub-grant recipients that receive Federal financial assistance through State-administered programs are not considered recipients of "indirect Federal financial assistance." Federal financial assistance provided to an organization is considered "indirect" within the meaning of the Establishment Clause of the First Amendment to the U.S. Constitution when:

(1) The government program through which the beneficiary receives the voucher, certificate, or other similar means of government-funded payment is neutral toward religion;

(2) The organization receives the assistance as a result of a decision of the beneficiary, not a decision of the government; and

(3) The beneficiary has at least one adequate secular option for the use of the voucher, certificate, or other similar means of government-funded payment.

Intermediary means an entity, including a non-governmental organization, acting under a contract, grant, or other agreement with the Federal government or with a State or local government, that accepts Federal financial assistance and distributes that assistance to other organizations that, in turn, provide government-funded social services. If an intermediary, acting under a contract, grant, or other agreement with the Federal government or with a State or local government that is administering a program supported by Federal financial assistance, is given the authority under the contract, grant, or agreement to select non-governmental organizations to provide services supported by the Federal government, the intermediary must ensure compliance with the provisions of Executive Order 13559 and any implementing rules or guidance by the recipient of a contract, grant or agreement. If the intermediary is a non-governmental organization, it retains all other rights of a non-governmental organization under the program's statutory and regulatory provisions.

Social service program means a program that is administered by the Federal government, or by a State or local government using Federal financial assistance, and that provides services directed at reducing poverty, improving opportunities for low-income children, revitalizing low-income communities, empowering low-income families and low-income individuals to become self-sufficient, or otherwise helping people in need. Such programs include, but are not limited to, the following:

(1) Child care services, protective services for children and adults, services for children and adults in foster care, adoption services, services related to the management and maintenance of the home, day care services for adults, and services to meet the special needs of children, older individuals, and individuals with disabilities (including physical, mental, or emotional disabilities);

(2) Transportation services;

(3) Job training and related services, and employment services;

(4) Information, referral, and counseling services;

(5) The preparation and delivery of meals and services related to soup kitchens or food banks;

(6) Health support services;

(7) Literacy and mentoring programs;

(8) Services for the prevention and treatment of juvenile delinquency and substance abuse, services for the prevention of crime and the provision of assistance to the victims and the families of criminal offenders, and services related to intervention in, and prevention of, domestic violence; and

(9) Services related to the provision of assistance for housing under Federal law.

§ 19.3 Equal ability for faith-based organizations to seek and receive financial assistance through DHS social service programs.

(a) Faith-based organizations are eligible, on the same basis as any other organization, to seek and receive direct financial assistance from DHS for social service programs or to participate in social service programs administered or financed by DHS.

(b) Neither DHS, nor a State or local government, nor any other entity that administers any social service program supported by direct financial assistance from DHS, shall discriminate for or against an organization on the basis of the organization's religious motivation, character, or affiliation.

(c) Decisions about awards of Federal financial assistance must be free from political interference or even the appearance of such interference and must be made on the basis of merit, not on the basis of religion or religious belief or lack thereof, or on the basis of religious or political affiliation.

(d) Nothing in this part shall be construed to preclude DHS or any of its components from accommodating religious organizations and persons to the fullest extent consistent with the Constitution and laws of the United States.

(e) All organizations that participate in DHS social service programs, including religious organizations, must carry out eligible activities in accordance with all program requirements and other applicable requirements governing the conduct of DHS-supported activities, including those prohibiting the use of direct financial assistance from DHS to engage in explicitly religious activities. No grant document, agreement, covenant, memorandum of understanding, or policy issued by DHS or an intermediary in administering financial assistance from DHS shall disqualify a religious organization from participating in DHS's social service programs because such organization is motivated or influenced by religious faith to provide social services or because of its religious character or affiliation.

§ 19.4 Explicitly religious activities.

(a) Organizations that receive direct financial assistance from DHS to participate in or administer any social service program may not use direct Federal financial assistance that it receives (including through a prime or sub-award) to support or engage in any explicitly religious activities (including activities that involve overt religious content such as worship, religious instruction, or proselytization) or in any other manner prohibited by law.

(b) Organizations receiving direct financial assistance from DHS for social service programs are free to engage in explicitly religious activities, but such activities must be

(1) Clearly distinct from programs specifically supported by direct federal assistance;

(2) Offered separately, in time or location, from the programs, activities, or services specifically supported by direct DHS financial assistance pursuant to DHS social service programs; and

(3) Voluntary for the beneficiaries of the programs, activities, or services specifically supported by direct DHS financial assistance pursuant to DHS social service programs.

(c) All organizations that participate in DHS social service programs, including religious organizations, must carry out eligible activities in accordance with all program requirements and other applicable requirements governing the conduct of DHS-supported activities, including those prohibiting the use of direct financial assistance from DHS to engage in explicitly religious activities. No grant document, agreement, covenant, memorandum of understanding, or policy issued by DHS or a State or local government in administering financial assistance from DHS shall disqualify a religious organization from participating in DHS's social service programs because such organization is motivated or influenced by religious faith to provide social services or because of its religious character or affiliation.

(d) The use of indirect Federal financial assistance is not subject to the restriction in paragraphs (a), (b), and (c) of this section.

(e) Nothing in this part restricts DHS's authority under applicable federal law to fund activities, such as the provision of chaplaincy services, that can be directly funded by the Government consistent with the Establishment Clause.

§ 19.5 Nondiscrimination requirements.

An organization that receives financial assistance from DHS for a social service program shall not, in providing services or in outreach activities related to such services, favor or discriminate against a beneficiary of said program or activity on the basis of religion or religious belief, a refusal to hold a religious belief, or a refusal to attend or participate in a religious practice. Organizations that favor or discriminate against a beneficiary will be subject to applicable sanctions and penalties, as established by the requirements of the particular DHS social service program or activity. However, an organization that participates in a program funded by indirect financial assistance need not modify its program activities to accommodate a beneficiary who chooses to expend the indirect aid on the organization's program.

§ 19.6 Beneficiary protections: Written notice.

(a) Faith-based or religious organizations providing social services to beneficiaries under a DHS program supported by direct Federal financial assistance must give written notice to beneficiaries of certain protections. Such notice may be given in the form set forth in appendix A of this part. This notice must state that:

(1) The organization may not discriminate against beneficiaries on the basis of religion or religious belief, a refusal to hold a religious belief, or a refusal to attend or participate in a religious practice;

(2) The organization may not require beneficiaries to attend or participate in any explicitly religious activities that are offered by the organization, and any participation by beneficiaries in such activities must be purely voluntary;

(3) The organization must separate in time or location any privately funded explicitly religious activities from activities supported by direct Federal financial assistance;

(4) If a beneficiary objects to the religious character of the organization, the organization will undertake reasonable efforts to identify and refer the beneficiary to an alternative provider to which the beneficiary has no objection; and

(5) Beneficiaries may report an organization's violations of these protections, including any denials of services or benefits by an organization, by contacting or filing a complaint with the DHS Office for Civil Rights and Civil Liberties, or to any intermediary awarding entity.

(b) This written notice must be given to beneficiaries prior to the time they enroll in the program or receive services from such programs. When the nature of the service provided or exigent circumstances make it impracticable to provide such written notice in advance of the actual service, service providers must advise beneficiaries of their protections at the earliest available opportunity.

§ 19.7 Beneficiary protections: Referral requirements.

(a) If a beneficiary of a social service program covered under § 19.6 objects to the religious character of an organization that provides services under the program, that organization must promptly undertake reasonable efforts to identify and refer the beneficiary to an alternative provider to which the beneficiary has no objection.

(b) A referral may be made to another religiously affiliated provider, if the beneficiary has no objection to that provider. But if the beneficiary requests a secular provider, and a secular provider is available, then a referral must be made to that provider.

(c) Except for services provided by telephone, internet, or similar means, the referral must be to an alternative provider that is in reasonable geographic proximity to the organization making the referral and that offers services that are similar in substance and quality to those offered by the organization. The alternative provider also must have the capacity to accept additional clients.

(d) When the organization makes a referral to an alternative provider, it shall keep a record of that referral. If the organization determines that it is unable to identify an alternative provider, the organization shall both keep a record and promptly notify either DHS or an intermediary awarding entity. If the organization is unable to identify an alternative provider, DHS or the intermediary shall determine whether there is any other suitable alternative provider to which the beneficiary may be referred. An intermediary that receives a request for assistance in identifying an alternative provider shall notify, and may request assistance from, DHS.

§ 19.8 Independence of faith-based organizations.

(a) A faith-based organization that applies for, or participates in, a social service program supported with Federal financial assistance may retain its independence and may continue to carry out its mission, including the definition, development, practice, and expression of its religious beliefs, provided that it does not use direct Federal financial assistance contrary to § 19.4.

(b) Faith-based organizations may use space in their facilities to provide social services using financial assistance from DHS without removing or concealing religious articles, texts, art, or symbols.

(c) A faith-based organization using financial assistance from DHS for social service programs retains its authority over internal governance, and may also retain religious terms in its organization's name, select its board members on a religious basis, and include religious references in its organization's mission statements and other governing documents.

§ 19.9 Exemption from Title VII employment discrimination requirements.

(a) A faith-based organization's exemption, set forth in section 702(a) of the Civil Rights Act of 1964 (42 U.S.C. 2000e-1), from the Federal prohibition on employment discrimination on the basis of religion is not forfeited when the organization seeks or receives financial assistance from DHS for a social service program or otherwise participates in a DHS program.

(b) Where a DHS program contains independent statutory or regulatory provisions that impose nondiscrimination requirements on all grantees, those provisions are not waived or mitigated by this part. Accordingly, grantees should consult with the appropriate DHS program office to determine the scope of any applicable requirements.

§ 19.10 Commingling of Federal assistance.

(a) If a State, local, or Tribal government voluntarily contributes its own funds to supplement Federally supported activities, the State, local, or Tribal government has the option to segregate the Federal assistance or commingle it.

(b) If the State, local, or Tribal government chooses to commingle its own and Federal funds, the requirements of this part apply to all of the commingled funds.

(c) If a State, local, or Tribal government is required to contribute matching funds to supplement a Federally supported activity, the matching funds are considered commingled with the Federal assistance and therefore subject to the requirements of this part.

Appendix A to Part 19—Model Written Notice to Beneficiaries

NOTICE OF BENEFICIARY RIGHTS

Name of Organization:

Name of Program:

Contact Information for Program Staff (name, phone number, and email address, if appropriate):

Because this program is supported in whole or in part by direct financial assistance from the Federal Government, we are required to let you know that—

- We may not discriminate against you on the basis of religion or religious belief, your refusal to hold a religious belief, or your refusal to attend or participate in a religious practice;
- We may not require you to attend or participate in any explicitly religious activities that are offered by us, and any participation by you in these activities must be purely voluntary;
- We must separate in time or location any privately funded explicitly religious activities from activities supported with direct Federal financial assistance under this program;
- If you object to the religious character of our organization, we must make reasonable efforts to identify and refer you to an alternative provider to which you have no objection; however, we cannot guarantee that in every instance, an alternative provider will be available; and
- You may report violations of these protections, including any denials of services or benefits, by contacting or filing a written complaint with the Department of Homeland Security, Office for Civil Rights and Civil Liberties:

E-mail: *CRCLCompliance@hq.dhs.gov.*

Fax: 202–401–4708.

U.S. Mail: U.S. Department of Homeland Security Office for Civil Rights and Civil Liberties, Compliance Branch, 245 Murray Lane SW., Building 410, Mail Stop #0190, Washington, DC 20528.

{Where the program involves an intermediary, the recipient or intermediary should add where feasible:

You may also report violations of these protections, including any denials of services or benefits, to:

[Name and contact information for the intermediary]}

We must give you this written notice before you enroll in our program or receive services from the program.

BENEFICIARY REFERRAL REQUEST

If you object to receiving services from us based on the religious character of our organization, please complete this form and return it to the program contact identified above. If you object, we will make reasonable efforts to refer you to another service provider. With your consent, we will follow up with you or the organization to which you were referred to determine whether you contacted that organization.

Please check if applicable:

( ) I want to be referred to another service provider.

If you checked above that you wish to be referred to another service provider, please check one of the following:

( ) Please follow up with me.

Name:

Best way to reach me (phone/address/email):

( ) Please follow up with the service provider to which I was referred.

( ) Please do not follow up.

—End of Form—

DEPARTMENT OF AGRICULTURE

Accordingly, for the reasons described in the preamble, USDA amends 7 CFR part 16 as follows:

PART 16—EQUAL OPPORTUNITY FOR RELIGIOUS ORGANIZATIONS

■ 11. The authority citation for Part 16 is revised to read as follows:

Authority: 5 U.S.C. 301; E.O. 13279, 67 FR 77141; E.O. 13280, 67 FR 77145; E.O. 13559, 75 FR 71319.

■ 12. In § 16.1, revise paragraph (b) to read as follows:

§ 16.1 Purpose and applicability.

* * * * *

(b) Except as otherwise specifically provided in this part, the policy outlined in this part applies to all recipients and subrecipients of USDA assistance to which 2 CFR part 400 applies, and to recipients and subrecipients of Commodity Credit Corporation assistance that is administered by agencies of USDA.

§§ 16.2 through 16.5 [redesignated as §§ 16.3 through 16.6]

■ 13. Redesignate §§ 16.2 through 16.5 as §§ 16.3 through 16.6, respectively.

■ 14. Add a new § 16.2 to read as follows:

§ 16.2 Definitions.

As used in this part:

(a) USDA direct assistance is Federal financial assistance provided by USDA and means that the Federal Government or an intermediary (under this part) selects the provider and either purchases services from that provider (*e.g.*, via a contract) or awards funds to that provider to carry out a service (*e.g.*, via grant or cooperative agreement). In general, USDA assistance shall be treated as direct, unless it meets the definition of "USDA indirect assistance."

(b)(1) USDA indirect assistance is Federal financial assistance provided indirectly by USDA and means that the choice of the service provider is placed in the hands of the beneficiary, and the cost of that service is paid through a voucher, certificate, or other similar means of government-funded payment. Federal financial assistance provided to an organization is considered "indirect" within the meaning of the Establishment Clause of the First Amendment to the U.S. Constitution when

(i) The government program through which the beneficiary receives the voucher, certificate, or other similar means of government-funded payment is neutral toward religion;

(ii) The organization receives the assistance as a result of a decision of the beneficiary, not a decision of the government; and

(iii) The beneficiary has at least one adequate secular option for the use of the voucher, certificate, or other similar means of government-funded payment.

(2) The recipients of sub-grants that receive Federal financial assistance through State-administered programs (*e.g.*, flow-through programs such as the National School Lunch Program authorized under the Richard B. Russell National School Lunch Act, 42 U.S.C. 1751 *et seq.*) are not considered recipients of "USDA indirect assistance," as those terms are used in Executive Order 13559. These recipients of sub-awards are considered recipients of USDA direct assistance.

(c) Intermediary means an entity, including a non-governmental organization, acting under a contract, grant, or other agreement with the Federal Government or with a State or local government that accepts USDA direct assistance and distributes that assistance to other organizations that, in turn, provide government-funded services. If an intermediary, acting under a contract, grant, or other agreement with the Federal Government or with a State or local government that is administering a program supported by Federal financial assistance, is given the authority under the contract, grant, or agreement to select non-governmental organizations to provide services funded by the Federal Government, the intermediary must ensure compliance with the provisions of Executive Order 13559 and any implementing rules or guidance by the recipient of a contract, grant, or agreement. If the intermediary is a non-governmental organization, it retains all other rights of a non-governmental organization under the program's statutory and regulatory provisions.

■ 15. In newly redesignated § 16.3, revise paragraphs (a) and (b), introductory text, to read as follows:

§ 16.3 Rights of religious organizations.

(a) A religious organization is eligible, on the same basis as any other eligible private organization, to access and participate in USDA assistance programs. Neither the Federal Government nor a State or local government receiving USDA assistance shall, in the selection of service providers, discriminate for or against a religious organization on the basis of the organization's religious character or affiliation. Additionally, decisions about awards of USDA direct assistance or USDA indirect assistance must be free from political interference or even the appearance of such interference and must be made on the basis of merit, not on the basis of the religious affiliation of a recipient organization or lack thereof.

(b) A religious organization that participates in USDA assistance programs will retain its independence and may continue to carry out its mission, including the definition, practice, and expression of its religious beliefs, provided that it does not use USDA direct assistance to support any explicitly religious activities, including activities that involve overt religious content such as worship, religious instruction, or proselytization. Among other things, a religious organization may:

* * * * *

■ 16. Amend newly redesignated § 16.4 as follows:

■ a. Revise paragraphs (a), (b) and (d); and

■ b. Add new paragraphs (e), (f), (g), and (h).

§ 16.4 Responsibilities of participating organizations.

(a) Any organization that participates in a program funded by USDA financial assistance shall not, in providing services, discriminate against a current or prospective program beneficiary on the basis of religion, religious belief, a refusal to hold a religious belief, or a refusal to attend or participate in a religious practice. However, an organization that participates in a program funded by indirect financial assistance need not modify its program activities to accommodate a beneficiary who chooses to expend the indirect aid on the organization's program.

(b) Organizations that receive USDA direct assistance under any USDA program may not engage in explicitly religious activities, including activities that involve overt religious content such as worship, religious instruction, or proselytization, as part of the programs or services supported with USDA direct assistance. If an organization conducts such activities, the activities must be offered separately, in time or location, from the programs or services supported with USDA direct assistance, and participation must be voluntary for beneficiaries of the programs or services supported with such USDA direct assistance.

* * * * *

(d)(1) USDA direct assistance may be used for the acquisition, construction, or rehabilitation of structures only to the extent that those structures are used for conducting USDA programs and activities and only to the extent authorized by the applicable program statutes and regulations. USDA direct assistance may not be used for the acquisition, construction, or rehabilitation of structures to the extent that those structures are used by the USDA funding recipients for explicitly religious activities. Where a structure is used for both eligible and explicitly religious activities, USDA direct assistance may not exceed the cost of those portions of the acquisition, construction, or rehabilitation that are attributable to eligible activities in accordance with the cost accounting requirements applicable to USDA funds. Sanctuaries, chapels, or other rooms that an organization receiving direct assistance from USDA uses as its principal place of worship, however, are ineligible for USDA-funded improvements. Disposition of real property after the term of the grant or any change in use of the property during the term of the grant is subject to government-wide regulations governing real property disposition (see 2 CFR part 400).

(2) Any use of USDA direct assistance funds for equipment, supplies, labor, indirect costs, and the like shall be prorated between the USDA program or activity and any use for other purposes by the religious organization in accordance with applicable laws, regulations, and guidance.

(3) Nothing in this section shall be construed to prevent the residents of housing who are receiving USDA direct assistance funds from engaging in religious exercise within such housing.

(e) USDA direct assistance under any USDA program may not be used for explicitly religious activities, speech, and materials generated or controlled by the administrators, instructors, or officials of the organization receiving USDA direct assistance.

(f) *Beneficiary protections: Written notice.* (1) Faith-based organizations that receive USDA direct assistance under any domestic USDA program must give written notice in a manner prescribed by USDA to all beneficiaries and prospective beneficiaries of their right to be referred to an alternate provider when available. The written notice must be given in a manner prescribed by USDA, and state that:

(i) The organization may not discriminate against beneficiaries on the basis of religion or religious belief, a refusal to hold a religious belief, or a refusal to attend or participate in a religious practice;

(ii) The organization may not require beneficiaries to attend or participate in any explicitly religious activities that are offered by the organization, and any participation by beneficiaries in such activities must be purely voluntary;

(iii) The organization must separate in time or location any privately funded explicitly religious activities from activities supported by direct Federal financial assistance;

(iv) If a beneficiary objects to the religious character of the organization, the organization will undertake reasonable efforts to identify and refer the beneficiary to an alternate provider to which the prospective beneficiary has no objection; the organization may not be able to guarantee, however, that in every instance, an alternate provider will be available; and

(v) Beneficiaries may report violations of these protections (including denials of services or benefits) by an organization to, USDA (or, the intermediary, if applicable).

(2) This written notice must be given to beneficiaries prior to the time they enroll in the program or receive services from such programs. When the nature of the service provided or exigent circumstances make it impracticable to provide such written notice in advance of the actual service, service providers must advise beneficiaries of their protections at the earliest available opportunity.

(g) *Beneficiary protections: Referral requirements.* If a beneficiary or prospective beneficiary of a domestic social services program supported by USDA objects to the religious character of an organization that provides services under the program, that organization must promptly undertake reasonable efforts to identify and refer the beneficiary to an alternate provider, within reasonable geographic proximity to the provider, if available, to which the prospective beneficiary has no objection. In making the referral, the organization shall comply with all applicable privacy laws and regulations.

(1) A referral may be made to another faith-based organization, if the beneficiary has no objection to that provider. But if the beneficiary requests a secular provider, and a secular provider is available, then a referral must be made to that provider.

(2) Except for services provided by telephone, Internet, or similar means, the referral must be to an alternate provider that is in reasonable geographic proximity to the organization making the referral and that offers services that are similar in substance and quality to those offered by the organization, if one is available. The alternate provider also should have the capacity to accept additional clients, if one with capacity to accept additional clients is available.

(3) If the organization determines that it is unable to identify an alternate provider, the organization shall promptly notify the awarding entity, and the awarding entity shall determine whether there is any other suitable alternate provider to which the beneficiary may be referred. An intermediary that receives a request for assistance in identifying an alternate provider may request assistance from USDA or a State or local government receiving USDA direct assistance.

(4) In some cases, USDA may require that the awarding entity provide the organization with information regarding alternate providers. Such information regarding alternative providers should include providers (including secular organizations) within a reasonable geographic proximity that offer services that are similar in substance and quality and that would reasonably be expected to have the capacity to accept additional clients, provided any such organizations exist. An organization which relies on such information provided by the awarding entity shall be considered to have undertaken reasonable efforts to identify an alternate provider under this subpart.

(h) The requirements in paragraphs (b) through (g) of this section do not apply where USDA funds or benefits are provided to religious organizations as a result of a genuine and independent private choice of a beneficiary or through other indirect funding mechanisms, provided the religious organizations otherwise satisfy the requirements of the program.

■ 17. Revise newly redesignated § 16.5 to read as follows:

§ 16.5 Effect on State and local funds.

If a State or local government voluntarily contributes its own funds to supplement activities carried out under programs governed by this part, the State or local government has the option to separate out the USDA direct assistance funds or comingle them. If the funds are comingled, the provisions of this part shall apply to all of the comingled funds in the same manner, and to the same extent, as the provisions apply to the USDA direct assistance.

■ 18. Add appendix A to part 16 to read as follows:

Appendix A to Part 16—Written Notice of Beneficiary Rights

Name of Organization:

Name of Program:

Contact Information for Program Staff (name, phone number, and email address, if appropriate): Because this program is supported in whole or in part by financial assistance from the Federal Government, we are required to let you know that—

- We may not discriminate against you on the basis of religion or religious belief, a refusal to hold a religious belief, or a refusal to attend or participate in a religious practice;
- We may not require you to attend or participate in any explicitly religious activities that are offered by us, and any participation by you in these activities must be purely voluntary;
- We must separate in time or location any privately funded explicitly religious activities from activities supported with USDA direct assistance;
- If you object to the religious character of our organization, we must make reasonable efforts to identify and refer you to an alternate provider to which you have no objection. We cannot guarantee, however, that in every instance, an alternate provider will be available; and
- You may report violations of these protections (including denials of services or benefits) to _____.

We must provide you with this written notice before you enroll in our program or receive services from the program, as required by 7 CFR part 16.

BENEFICIARY REFERRAL REQUEST

If you object to receiving services from us based on the religious character of our organization, please complete this form and return it to the program contact identified above. Your use of this form is voluntary.

If you object to the religious character of our organization, we must make reasonable efforts to identify and refer you to an alternate provider to which you have no objection. We cannot guarantee, however, that in every instance, an alternate provider will be available. With your consent, we will follow up with you or the organization to which you are referred to determine whether you have contacted that organization.

( ) Please check if you want to be referred to another service provider.

Please provide the following information if you want us to follow up with you:

Your Name:

Best way to reach me (phone/address/email):

Please provide the following information if you want us to follow up with the service provider only.

Your Name:

You are permitted to withhold your name, though if you choose to do so, we will be unable to follow up with you or the service provider about your referral.

( ) Please check if you do not want follow up.

FOR STAFF USE ONLY

1. Date of Objection: _/_/_
2. Referral (check one):

( ) Individual was referred to (name of alternate provider and contact information):

( ) Individual left without a referral

( ) No alternate service provider is available—summarize below what efforts you made to identify an alternate provider (including reaching out to USDA or the intermediary, if applicable):

3. Follow-up date: __/__/__

( ) Individual contacted alternate provider

( ) Individual did not contact alternate provider

4. Staff name and initials:

—End of Form—

AGENCY FOR INTERNATIONAL DEVELOPMENT

For the reasons stated in the preamble, USAID amends chapter II of title 22 of the Code of Federal Regulations as follows:

PART 205—PARTICIPATION BY RELIGIOUS ORGANIZATIONS IN USAID PROGRAMS

■ 19. The authority citation for part 205 continues to read as follows:

Authority: 22 U.S.C. 2381(a).

■ 20. In § 205.1:

■ a. Paragraphs (b), (c), (e), and (f) are revised; and

■ b. New paragraph (j) is added, to read as follows:

§ 205.1 Grants and cooperative agreements.

* * * * *

(b) Organizations that receive direct financial assistance from USAID under any USAID program (including through a prime award or sub-award) may not engage in explicitly religious activities (including activities that involve overt religious content such as worship, religious instruction, or proselytization), as part of the programs or services directly funded with direct financial assistance from USAID. If an organization conducts such activities, the activities must be offered separately, in time or location, from the programs or services funded with direct financial assistance from USAID, and participation must be voluntary for beneficiaries of the programs or services funded with such assistance. Nothing in this part restricts USAID's authority under applicable federal law to fund activities, such as the provision of chaplaincy services, that can be directly funded by the Government consistent with the Establishment Clause.

(c) A religious organization that applies for, or participates in, USAID-funded programs or services (including through a prime award or sub-award) may retain its independence and may continue to carry out its mission, including the definition, development, practice, and expression of its religious beliefs, provided that it does not use direct financial assistance from USAID (including through a prime award or sub-award) to support or engage in any explicitly religious activities (including activities that involve overt religious content such as worship, religious instruction, or proselytization), or in any other manner prohibited by law. Among other things, a religious organization that receives financial assistance from USAID may use space in its facilities, without removing religious art, icons, scriptures, or other religious symbols. In addition, a religious organization that receives financial assistance from USAID retains its authority over its internal governance, and it may retain religious terms in its organization's name, select its board members on a religious basis, and include religious references in its organization's mission statements and other governing documents.

* * * * *

(e) An organization that participates in programs funded by financial assistance from USAID (including through a prime award or sub-award) shall not, in providing services, discriminate against a program beneficiary or potential program beneficiary on the basis of religion or religious belief, refusal to hold a religious belief, or a refusal to attend or participate in a religious practice.

(f) No grant document, contract, agreement, covenant, memorandum of understanding, policy, or regulation that is used by USAID shall require only religious organizations to provide assurances that they will not use monies or property for explicitly religious activities (including activities that involve overt religious content such as worship, religious instruction, or proselytization). Any such restrictions shall apply equally to religious and secular organizations. All organizations that participate in USAID programs (including through a prime award or subaward), including religious ones, must carry out eligible activities in accordance with all program requirements and other applicable requirements governing the conduct of USAID-funded activities, including those prohibiting the use of direct financial assistance from USAID to engage in explicitly religious activities. No grant document, agreement, covenant, memorandum of understanding, policy, or regulation that is used by USAID shall disqualify religious organizations from participating in USAID's programs because such organizations are motivated or influenced by religious faith to provide social services, or because of their religious character or affiliation.

* * * * *

(j) Decisions about awards of USAID financial assistance must be free from political interference or even the appearance of such interference and must be made on the basis of merit, not on the basis of the religious affiliation of a recipient organization, or lack thereof.

Department of Housing and Urban Development

Accordingly, for the reasons described in the preamble, HUD amends 24 CFR parts 5, 92, 570, 574, 576, 578, and 1003 as follows:

PART 5—GENERAL HUD PROGRAM REQUIREMENTS; WAIVERS

■ 21. The authority citation for 24 CFR part 5 is revised to read as follows:

Authority: 42 U.S.C. 1437a, 1437c, 1437f, 1437n, 3535(d), Sec. 327, Pub. L. 109–115, 119 Stat. 2936, Sec. 607, Pub. L. 109–162, 119 Stat. 3051, E.O. 13279, and E.O. 13559.

■ 22. In § 5.109:

■ a. The section heading is revised;

■ b. Paragraphs (a), (b), (c), (d), (f), (g), and (h) are revised;

■ c. Paragraph (e) is redesignated as paragraph (i);

■ d. New paragraph (e) is added; and

■ e. New paragraphs (j) and (k) are added, to read as follows:

§ 5.109 Equal participation of faith-based organizations in HUD programs and activities.

(a) *Purpose.* Consistent with Executive Order 13279 (issued on December 12, 2002, 67 FR 77141), entitled "Equal Protection of the Laws for Faith-Based and Community Organizations," as amended by Executive Order 13559 (issued on November 17, 2010, 75 FR 71319), entitled "Fundamental Principles and Policymaking Criteria for Partnerships With Faith-Based and Other Neighborhood Organizations," this section describes requirements for ensuring the equal participation of faith-based organizations in HUD programs and activities. These requirements apply to all HUD programs and activities, including all of HUD's Native American Programs, except as may be otherwise noted in the respective program regulations in title 24 of the Code of Federal Regulations (CFR), or unless inconsistent with certain HUD program authorizing statutes.

(b) *Definitions.* The following definitions apply to this section:

Direct Federal financial assistance means Federal financial assistance provided when a Federal Government agency or an intermediary, as defined in this section, selects the provider and either purchases services from that provider (*i.e.,* via a contract) or awards funds to that provider to carry out an activity (*e.g.,* via grant, sub-grant, sub-award, or cooperative agreement). The recipients of sub-grants or sub-awards that receive Federal financial assistance through State-administered programs (*e.g.,* flow-through programs) are considered recipients of direct Federal financial assistance. In general, Federal financial assistance shall be treated as direct, unless it meets the definition of indirect Federal financial assistance.

Federal financial assistance means assistance that non-Federal entities receive or administer in the forms of grants, contracts, loans, loan guarantees, property, cooperative agreements, food commodities, direct appropriations, or other assistance, but does not include a tax credit, deduction, or exemption.

Indirect Federal financial assistance means Federal financial assistance provided when the choice of the provider is placed in the hands of the beneficiary, and the cost of that service is paid through a voucher, certificate, or other similar means of Government-funded payment. Federal financial assistance provided to an organization is considered indirect when the Government program through which the beneficiary receives the voucher, certificate, or other similar means of Government-funded payment is neutral toward religion; the organization receives the assistance as a result of a decision of the beneficiary, not a decision of the Government; and the beneficiary has at least one adequate secular option for the use of the voucher, certificate, or other similar means of Government-funded payment.

Intermediary means an entity, including a nongovernmental organization, acting under a contract, grant, or other agreement with the Federal Government or with a State, tribal or local government that accepts Federal financial assistance and distributes that assistance to other entities that, in turn, carry out activities under HUD programs.

(c) *Equal participation of faith-based organizations in HUD programs and activities.* Faith-based organizations are eligible, on the same basis as any other organization, to participate in HUD programs and activities. Neither the Federal Government, nor a State, tribal or local government, nor any other entity that administers any HUD program or activity, shall discriminate against an organization on the basis of the organization's religious character or affiliation, or lack thereof. In addition, decisions about awards of Federal financial assistance must be free from political interference or even the appearance of such interference and must be made on the basis of merit, not based on the religious character or affiliation, or lack thereof, of an organization.

(d) *Separation of explicitly religious activities from direct Federal financial assistance.*

(1) A faith-based organization that applies for, or participates in, a HUD program or activity supported with Federal financial assistance retains its independence and may continue to carry out its mission, including the definition, development, practice, and expression of its religious beliefs, provided that it does not use direct Federal financial assistance that it receives (*e.g.,* via contract, grant, sub-grant, sub-award or cooperative agreement) to support or engage in any explicitly religious activities (including activities that involve overt religious content such as worship, religious instruction, or proselytization), or in any other manner prohibited by law.

(2) A faith-based organization that receives direct Federal financial

assistance may use space (including a sanctuary, chapel, prayer hall, or other space) in its facilities (including a temple, synagogue, church, mosque, or other place of worship) to carry out activities under a HUD program without removing religious art, icons, scriptures, or other religious symbols. In addition, a faith-based organization participating in a HUD program or activity retains its authority over its internal governance, and may retain religious terms in its organization's name, select its board members on a religious basis, and include religious references in its organization's mission statements and other governing documents.

(e) *Explicitly religious activities.* If an organization engages in explicitly religious activities (including activities that involve overt religious content such as worship, religious instruction, or proselytization), the explicitly religious activities must be offered separately, in time or location, from the programs or activities supported by direct Federal financial assistance and participation must be voluntary for the beneficiaries of the programs or activities that receive direct Federal financial assistance.

(f) *Intermediary responsibilities to ensure equal participation of faith-based organizations in HUD programs.* If an intermediary—acting under a contract, grant, or other agreement with the Federal Government or with a State, tribal or local government that is administering a program supported by Federal financial assistance—is given the authority to select a nongovernmental organization to receive Federal financial assistance under a contract, grant, sub-grant, sub-award, or cooperative agreement, the intermediary must ensure that such organization complies with the requirements of this section. If the intermediary is a nongovernmental organization, it retains all other rights of a nongovernmental organization under the program's statutory and regulatory provisions.

(g) *Beneficiary protections.* Faith-based organizations that carry out programs or activities with direct Federal financial assistance from HUD must give written notice to beneficiaries and prospective beneficiaries of the programs or activities describing certain protections available to them, as provided in this subsection. In addition, if a beneficiary or prospective beneficiary objects to the religious character of the organization carrying out the programs or activities, that organization must promptly undertake reasonable efforts to identify and refer the beneficiary or prospective beneficiary to an alternative provider to which the beneficiary or prospective beneficiary has no such objection.

(1) *Written notice.* The written notice must state that:

(i) The organization may not discriminate against a beneficiary or prospective beneficiary on the basis of religion, religious belief, a refusal to hold a religious belief, or a refusal to attend or participate in a religious practice;

(ii) The organization may not require beneficiaries to attend or participate in any explicitly religious activities that are offered by the organization, and any participation by beneficiaries in such activities must be purely voluntary;

(iii) The organization must separate, in time or location, any privately funded explicitly religious activities from activities supported by direct Federal financial assistance;

(iv) If a beneficiary objects to the religious character of the organization, the organization must undertake reasonable efforts to identify and refer the beneficiary to an alternative provider to which the beneficiary has no such objection; and

(v) Beneficiaries or prospective beneficiaries may report an organization's violation of these protections, including any denial of services or benefits by an organization, by contacting or filing a written complaint to HUD or the intermediary, if applicable.

(2) *Timing of notice.* The written notice must be given to prospective beneficiaries before they enroll in any HUD program or activity. When the nature of the program or activity or exigent circumstances make it impracticable to provide the written notice in advance, the organization must provide written notice to beneficiaries of their protections at the earliest available opportunity.

(3) *Referral requirements.* (i) If a beneficiary or prospective beneficiary of a program or activity that receives direct Federal financial assistance from HUD objects to the religious character of an organization that carries out the program or activity, that organization must promptly undertake reasonable efforts to identify and refer the beneficiary or prospective beneficiary to an alternative provider to which the beneficiary or prospective beneficiary has no such objection.

(ii) A referral may be made to another faith-based organization, if the beneficiary or prospective beneficiary has no objection to that provider based on the provider's religious character. But if the beneficiary or prospective beneficiary requests a secular provider, and a secular provider is available, then a referral must be made to that provider.

(iii) Except for activities carried out by telephone, Internet, or similar means, the referral must be to an alternative provider that is in reasonable geographic proximity to the organization making the referral and that carries out activities that are similar in substance and quality to those offered by the organization. The alternative provider also must have the capacity to accept additional beneficiaries.

(iv) If the organization determines that it is unable to identify an alternative provider, the organization shall promptly notify the intermediary or, if there is no intermediary, HUD. If HUD or an intermediary is notified that an organization is unable to identify an alternative provider, HUD or the intermediary, as appropriate, shall promptly determine whether there is any other suitable alternative provider to which the beneficiary or prospective beneficiary may be referred. An intermediary that receives a request for assistance in identifying an alternative provider may request assistance from HUD.

(4) *Recordkeeping.* A faith-based organization providing a referral under paragraph (g)(3) of this section must document a beneficiary or prospective beneficiary's request for a referral, whether the beneficiary or prospective beneficiary was referred to another provider, to which provider the beneficiary or prospective beneficiary was referred, and if the beneficiary or prospective beneficiary contacted the alternative provider, unless the beneficiary or prospective beneficiary requests no follow up.

(h) *Nondiscrimination requirements.* Any organization that receives Federal financial assistance under a HUD program or activity shall not, in providing services or carrying out activities with such assistance, discriminate against a beneficiary or prospective beneficiary on the basis of religion, religious belief, a refusal to hold a religious belief, or a refusal to attend or participate in a religious practice. However, this section does not require any organization that only receives indirect Federal financial assistance to modify its program or activities to accommodate a beneficiary that selects the organization to receive indirect aid.

* * * * *

(j) *Acquisition, construction, and rehabilitation of structures.* Direct Federal financial assistance may be used for the acquisition, construction, or rehabilitation of structures only to the extent that those structures are used for conducting eligible activities under a HUD program or activity. Where a structure is used for both eligible and explicitly religious activities (including activities that involve overt religious content such as worship, religious instruction, or proselytization), direct Federal financial assistance may not exceed the cost of the share of acquisition, construction, or rehabilitation attributable to eligible activities in accordance with the cost accounting requirements applicable to the HUD program or activity. However, acquisition, construction, or rehabilitation of sanctuaries, chapels, or other rooms that a HUD-funded faith-based organization uses as its principal place of worship, may not be paid with direct Federal financial assistance. Disposition of real property by a faith-based organization after its use for an authorized purpose, or any change in use of the property from an authorized purpose, is subject to Government-wide regulations governing real property disposition (2 CFR part 200, subpart D) and the HUD program regulations, as directed by HUD.

(k) *Commingling of Federal and State, tribal, and local funds.* If a State, tribal, or local government voluntarily contributes its own funds to supplement direct Federal financial assistance for an activity, the State, tribal or local government has the option to segregate those funds or commingle them with the direct Federal financial assistance. However, if the funds are commingled, the requirements of this section apply to all of the commingled funds. Further, if a State, tribal, or local government is required to contribute matching funds to supplement direct Federal financial assistance for an activity, the matching funds are considered commingled with the direct Federal financial assistance and, therefore, subject to the requirements of this section. Some HUD programs' requirements govern any activity assisted under those programs. Accordingly, recipients should consult with the appropriate HUD program office to determine the scope of applicable requirements.

PART 92—HOME INVESTMENT PARTNERSHIPS PROGRAM

■ 23. The authority citation for 24 CFR part 92 continues to read as follows:

Authority: 42 U.S.C. 3535(d) and 12701–12839.

■ 24. Revise § 92.257 to read as follows:

§ 92.257 Equal participation of faith-based organizations.

The HUD program requirements in § 5.109 apply to the HOME program, including the requirements regarding disposition and change in use of real property by a faith-based organization.

PART 570—COMMUNITY DEVELOPMENT BLOCK GRANTS

■ 25. The authority citation for 24 CFR part 570 continues to read as follows:

Authority: 42 U.S.C. 3535(d) and 5301–5320.

■ 26. In § 570.200 revise paragraph (j) to read as follows:

§ 570.200 General policies.

* * * * *

(j) *Equal participation of faith-based organizations.* The HUD program requirements in § 5.109 of this title apply to the CDBG program, including the requirements regarding disposition and change in use of real property by a faith-based organization.

PART 574—HOUSING OPPORTUNITIES FOR PERSONS WITH AIDS

■ 27. The authority citation for 24 CFR part 574 continues to read as follows:

Authority: 42 U.S.C. 3535(d) and 12901–12912.

■ 28. In § 574.300, revise paragraph (c) to read as follows:

§ 574.300 Eligible activities.

* * * * *

(c) *Equal participation of faith-based organizations.* The HUD program requirements in § 5.109 of this title apply to the HOPWA program, including the requirements regarding disposition and change in use of real property by a faith-based organization.

PART 576—EMERGENCY SOLUTIONS GRANTS PROGRAM

■ 29. The authority citation for 24 CFR part 576 continues to read as follows:

Authority: 42 U.S.C. 11371 *et seq.*, 42 U.S.C. 3535(d).

■ 30. Revise § 576.406 to read as follows:

§ 576.406 Equal participation of faith-based organizations.

The HUD program requirements in § 5.109 of this title apply to the ESG program, including the requirements regarding disposition and change in use of real property by a faith-based organization.

PART 578—CONTINUUM OF CARE PROGRAM

■ 31. The authority citation for 24 CFR part 578 continues to read as follows:

Authority: 42 U.S.C. 11371 *et seq.*, 42 U.S.C. 3535(d).

■ 32. In § 578.87, revise paragraph (b) to read as follows:

§ 578.87 Limitation on use of funds.

* * * * *

(b) *Equal participation of faith-based organizations.* The HUD program requirements in § 5.109 apply to the Continuum of Care program, including the requirements regarding disposition and change in use of real property by a faith-based organization.

* * * * *

PART 1003—COMMUNITY DEVELOPMENT BLOCK GRANTS FOR INDIAN TRIBES AND ALASKA NATIVE VILLAGES

■ 33. The authority citation for 24 CFR part 1003 continues to read as follows:

Authority: 42 U.S.C. 3535(d) and 5301 *et seq.*

■ 34. Revise § 1003.600 to read as follows:

§ 1003.600 Equal participation of faith-based organizations.

The HUD program requirements in § 5.109 of this title apply to the ICDBG program, including the requirements regarding disposition and change in use of real property by a faith-based organization.

Department of Justice

■ 35. For the reasons stated in the joint preamble, the Department of Justice revises part 38 of title 28 of the Code of Federal Regulations to read as follows:

PART 38—PARTNERSHIPS WITH FAITH–BASED AND OTHER NEIGHBORHOOD ORGANIZATIONS

Sec.
38.1 Purpose.
38.2 Applicability and scope.
38.3 Definitions.
38.4 Policy.
38.5 Responsibilities.
38.6 Procedures.
38.7 Assurances.
38.8 Enforcement.
Appendix A to Part 38—Written Notice of Beneficiary Protections
Appendix B to Part 38—Beneficiary Referral Request

Authority: 28 U.S.C. 509; 5 U.S.C. 301; E.O. 13279, 67 FR 77141, 3 CFR, 2002 Comp., p. 258, Dec. 12. 2002; 18 U.S.C. 4001, 4042, 5040; 42 U.S.C. 14045b; 21 U.S.C. 871; 25 U.S.C. 3681; Pub. L. 107–273, 116 Stat. 1758, Nov. 2, 2002; Pub. L. 109–162, 119 Stat.

2960, Jan. 6, 2006; 42 U.S.C. 3751, 3753, 3762b, 3782, 3796dd–1, 3796dd–7, 3796gg–1, 3796gg–0b, 3796gg–3, 3796h, 3796ii–2, 3797u–3, 3797w, 5611, 5672, 10604; E.O. 13559, 75 FR 71319, 3 CFR, 2010 Comp., p. 273, Nov. 17, 2010.

§ 38.1 Purpose.

The purpose of this part is to implement Executive Order 13279 and Executive Order 13559.

§ 38.2 Applicability and scope.

(a) A faith-based or religious organization that applies for, or participates in, a social service program supported with Federal financial assistance may retain its independence and may continue to carry out its mission, including the definition, development, practice, and expression of its religious beliefs, provided that it does not use direct Federal financial assistance, whether received through a prime award or sub-award, to support or engage in any explicitly religious activities, including activities that involve overt religious content such as worship, religious instruction, or proselytization.

(b) The use of indirect Federal financial assistance is not subject to this restriction.

(c) Nothing in this part restricts the Department's authority under applicable Federal law to fund activities, such as the provision of chaplaincy services, that can be directly funded by the Government consistent with the Establishment Clause.

§ 38.3 Definitions.

As used in this part:

(a)(1) "Direct Federal financial assistance" or "Federal financial assistance provided directly" refers to situations where the Government or an intermediary (under this part) selects the provider and either purchases services from that provider (*e.g.*, via a contract) or awards funds to that provider to carry out a service (*e.g.*, via a grant or cooperative agreement). In general, and except as provided in paragraph (a)(2) of this section, Federal financial assistance shall be treated as direct, unless it meets the definition of "indirect Federal financial assistance" or "Federal financial assistance provided indirectly."

(2) Recipients of sub-grants that receive Federal financial assistance through State administering agencies or State-administered programs are recipients of "direct Federal financial assistance" (or recipients of "Federal financial assistance provided directly").

(b) "Indirect Federal financial assistance" or "Federal financial assistance provided indirectly" refers to situations where the choice of the service provider is placed in the hands of the beneficiary, and the cost of that service is paid through a voucher, certificate, or other similar means of government-funded payment. Federal financial assistance provided to an organization is considered "indirect" when

(1) The government program through which the beneficiary receives the voucher, certificate, or other similar means of government-funded payment is neutral toward religion;

(2) The organization receives the assistance as a result of a decision of the beneficiary, not a decision of the Government; and

(3) The beneficiary has at least one adequate secular option for the use of the voucher, certificate, or other similar means of government-funded payment.

(c)(1) "Intermediary" or "pass-through entity" means an entity, including a nonprofit or nongovernmental organization, acting under a contract, grant, or other agreement with the Federal Government or with a State or local government, such as a State administering agency, that accepts Federal financial assistance as a primary recipient or grantee and distributes that assistance to other organizations that, in turn, provide government-funded social services.

(2) When an intermediary, such as a State administering agency, distributes Federal financial assistance to other organizations, it replaces the Department as the awarding entity. The intermediary remains accountable for the Federal financial assistance it disburses and, accordingly, must ensure that any providers to which it disburses Federal financial assistance also comply with this part.

(d) "Department program" refers to a grant, contract, or cooperative agreement funded by a discretionary, formula, or block grant program administered by or from the Department.

(e) "Grantee" includes a recipient of a grant, a signatory to a cooperative agreement, or a contracting party.

(f) The "Office for Civil Rights" refers to the Office for Civil Rights in the Department's Office of Justice Programs.

§ 38.4 Policy.

(a) *Grants (formula and discretionary), contracts, and cooperative agreements.* Faith-based or religious organizations are eligible, on the same basis as any other organization, to participate in any Department program for which they are otherwise eligible. Neither the Department nor any State or local government receiving funds under any Department program shall, in the selection of service providers, discriminate for or against an organization on the basis of the organization's religious character or affiliation, or lack thereof.

(b) *Political or religious affiliation.* Decisions about awards of Federal financial assistance must be free from political interference or even the appearance of such interference and must be made on the basis of merit, not on the basis of religion, religious belief, or lack thereof.

§ 38.5 Responsibilities.

(a) Organizations that receive direct financial assistance from the Department may not engage in explicitly religious activities, including activities that involve overt religious content such as worship, religious instruction, or proselytization, as part of the programs or services funded with direct financial assistance from the Department. If an organization conducts such explicitly religious activities, the activities must be offered separately, in time or location, from the programs or services funded with direct financial assistance from the Department, and participation must be voluntary for beneficiaries of the programs or services funded with such assistance.

(b) A faith-based or religious organization that participates in the Department-funded programs or services shall retain its independence from Federal, State, and local governments, and may continue to carry out its mission, including the definition, practice, and expression of its religious beliefs, provided that it does not use direct financial assistance from the Department to support any explicitly religious activities, including activities that involve overt religious content such as worship, religious instruction, or proselytization. Among other things, a faith-based or religious organization that receives financial assistance from the Department may use space in its facilities without removing religious art, icons, messages, scriptures, or symbols. In addition, a faith-based or religious organization that receives financial assistance from the Department retains its authority over its internal governance, and it may retain religious terms in its organization's name, select its board members on a religious basis, and include religious references in its mission statements and other governing documents.

(c) Any organization that participates in programs funded by Federal financial assistance from the Department shall not, in providing services, discriminate against a program beneficiary or prospective program beneficiary on the basis of religion, a religious belief, a refusal to hold a religious belief, or a refusal to attend or participate in a religious practice. However, an organization that participates in a program funded by indirect financial assistance need not modify its program activities to accommodate a beneficiary who chooses to expend the indirect aid on the organization's program.

(d) No grant document, agreement, covenant, memorandum of understanding, policy, or regulation that the Department or a State or local government uses in administering financial assistance from the Department shall require only faith-based or religious organizations to provide assurances that they will not use monies or property for explicitly religious activities. All organizations, including religious ones, that participate in Department programs must carry out eligible activities in accordance with all program requirements and other applicable requirements governing the conduct of Department-funded activities, including those prohibiting the use of direct financial assistance from the Department to engage in explicitly religious activities. No grant document, agreement, covenant, memorandum of understanding, policy, or regulation that is used by the Department or a State or local government in administering financial assistance from the Department shall disqualify faith-based or religious organizations from participating in the Department's programs because such organizations are motivated or influenced by religious faith to provide social services, or because of their religious character or affiliation.

(e) *Exemption from Title VII employment discrimination requirements.* A faith-based or religious organization's exemption from the Federal prohibition on employment discrimination on the basis of religion, set forth in section 702(a) of the Civil Rights Act of 1964, 42 U.S.C. 2000e–1(a), is not forfeited when the organization receives direct or indirect Federal financial assistance from the Department. Some Department programs, however, contain independent statutory provisions requiring that all grantees agree not to discriminate in employment on the basis of religion. Accordingly, grantees should consult with the appropriate Department program office to determine the scope of any applicable requirements.

(f) If an intermediary, acting under a contract, grant, or other agreement with the Federal Government or with a State or local government that is administering a program supported by Federal financial assistance, is given the authority under the contract, grant, or agreement to select organizations to provide services funded by the Federal Government, the intermediary must ensure the compliance of the recipient of a contract, grant, or agreement with the provisions of Executive Order 13279, as amended by Executive Order 13559, and any implementing rules or guidance. If the intermediary is a nongovernmental organization, it retains all other rights of a nongovernmental organization under the program's statutory and regulatory provisions.

(g) In general, the Department does not require that a grantee, including a religious organization, obtain tax-exempt status under section 501(c)(3) of the Internal Revenue Code to be eligible for funding under Department programs. Many grant programs, however, do require an organization to be a "nonprofit organization" in order to be eligible for funding. Individual solicitations that require organizations to have nonprofit status will specifically so indicate in the eligibility sections of the solicitations. In addition, any solicitation that requires an organization to maintain tax-exempt status shall expressly state the statutory authority for requiring such status. Grantees should consult with the appropriate Department program office to determine the scope of any applicable requirements. In Department programs in which an applicant must show that it is a nonprofit organization, the applicant may do so by any of the following means:

(1) Proof that the Internal Revenue Service currently recognizes the applicant as an organization to which contributions are tax deductible under section 501(c)(3) of the Internal Revenue Code;

(2) A statement from a State taxing body or the State secretary of state certifying that:

(i) The organization is a nonprofit organization operating within the State; and

(ii) No part of its net earnings may lawfully benefit any private shareholder or individual;

(3) A certified copy of the applicant's certificate of incorporation or similar document that clearly establishes the nonprofit status of the applicant; or

(4) Any item described in paragraphs (g)(1) through (g)(3) of this section if that item applies to a State or national parent organization, together with a statement by the State or parent organization that the applicant is a local nonprofit affiliate.

(h) Grantees should consult with the appropriate Department program office to determine the applicability of this part in foreign countries or sovereign lands.

§ 38.6 Procedures.

(a) *Effect on State and local funds.* If a State or local government voluntarily contributes its own funds to supplement activities carried out under the applicable programs, the State or local government has the option to separate out the Federal funds or commingle them. If the funds are commingled, the provisions of this section shall apply to all of the commingled funds in the same manner, and to the same extent, as the provisions apply to the Federal funds.

(b) To the extent otherwise permitted by Federal law, the restrictions on explicitly religious activities set forth in this section do not apply to indirect Federal financial assistance.

(c) *Beneficiary protections: written notice.* (1) Faith-based or religious organizations providing social services to beneficiaries under a program supported by direct Federal financial assistance from the Department must give written notice to beneficiaries and prospective beneficiaries of certain protections. Such notice must be given in a manner prescribed by the Office for Civil Rights. This notice must state the following:

(i) The organization may not discriminate against beneficiaries or prospective beneficiaries on the basis of religion, a religious belief, a refusal to hold a religious belief, or a refusal to attend or participate in a religious practice;

(ii) The organization may not require beneficiaries or prospective beneficiaries to attend or participate in any explicitly religious activities that are offered by the organization, and any participation by beneficiaries in such activities must be purely voluntary;

(iii) The organization must separate in time or location any privately funded explicitly religious activities from activities supported by direct Federal financial assistance;

(iv) If a beneficiary or prospective beneficiary objects to the religious character of the organization, the organization will undertake reasonable efforts to identify and refer the beneficiary or prospective beneficiary to an alternative provider to which the beneficiary or prospective beneficiary has no objection; and

(v) Beneficiaries or prospective beneficiaries may report an organization's violation of these protections, including any denials of services or benefits by an organization, by contacting or filing a written complaint with the Office for Civil Rights or the intermediary that awarded funds to the organization.

(2) This written notice must be given to prospective beneficiaries prior to the time they enroll in the program or receive services from the program. When the nature of the service provided or exigent circumstances make it impracticable to provide such written notice in advance of the actual service, organizations must advise beneficiaries of their protections at the earliest available opportunity.

(3) The notice that a faith-based or religious organization may use to notify beneficiaries or prospective beneficiaries of their protections under paragraph (g)(1) of this section is specified in appendix A to this part.

(d) *Beneficiary protections: referral requirements.* (1) If a beneficiary or prospective beneficiary of a social service program supported by direct Federal financial assistance from the Department objects to the religious character of an organization that provides services under the program, that organization must promptly undertake reasonable efforts to identify and refer the beneficiary or prospective beneficiary to an alternative provider to which the beneficiary or prospective beneficiary has no objection based on the organization's religious character. See appendix B to this part.

(2) An organization may refer a beneficiary or prospective beneficiary to another faith-based or religious organization that provides comparable services, if the beneficiary or prospective beneficiary has no objection to that provider based on the organization's religious character. But if the beneficiary or prospective beneficiary requests a secular provider, and a secular provider is available, then a referral must be made to that provider.

(3) Except for services provided by telephone, Internet, or similar means, the referral must be to an alternative provider that is in reasonable geographic proximity to the organization making the referral and that offers services that are similar in substance and quality to those offered by the organization. The alternative provider also must have the capacity to accept additional clients.

(4) When the organization makes a referral to an alternative provider, the organization shall maintain a record of that referral for review by the awarding entity. When the organization determines that it is unable to identify an alternative provider, the organization shall promptly notify and maintain a record for review by the awarding entity. If the organization is unable to identify an alternative provider, the awarding entity shall determine whether there is any other suitable alternative provider to which the beneficiary may be referred. An intermediary that receives a request for assistance in identifying an alternative provider may request assistance from the Department.

§ 38.7 Assurances.

(a) Every application submitted to the Department for direct Federal financial assistance subject to this part must contain, as a condition of its approval and the extension of any such assistance, or be accompanied by, an assurance or statement that the program is or will be conducted in compliance with this part.

(b) Every intermediary must provide for such methods of administration as are required by the Office for Civil Rights to give reasonable assurance that the intermediary will comply with this part and effectively monitor the actions of its recipients.

§ 38.8 Enforcement.

(a) The Office for Civil Rights is responsible for reviewing the practices of recipients of Federal financial assistance to determine whether they are in compliance with this part.

(b) The Office for Civil Rights is responsible for investigating any allegations of noncompliance with this part.

(c) Recipients of Federal financial assistance determined to be in violation of any provisions of this part are subject to the enforcement procedures and sanctions, up to and including suspension and termination of funds, authorized by applicable laws.

(d) An allegation of any violation or discrimination by an organization, based on this regulation, may be filed with the Office for Civil Rights or the intermediary that awarded the funds to the organization.

Appendix A to Part 38—Written Notice of Beneficiary Protections

Name of Organization:

Name of Program:

Contact Information for Program Staff (name, phone number, and email address, if appropriate):

Because this program is supported in whole or in part by financial assistance from the Federal Government, we are required to let you know that—

- We may not discriminate against you on the basis of religion, a religious belief, a refusal to hold a religious belief, or a refusal to attend or participate in a religious practice;
- We may not require you to attend or participate in any explicitly religious activities that we offer, and your participation in these activities must be purely voluntary;
- We must separate in time or location any privately funded explicitly religious activities from activities supported with direct Federal financial assistance;
- If you object to the religious character of our organization, we must make reasonable efforts to identify and refer you to an alternative provider to which you have no objection; and
- You may report violations of these protections to the U.S. Department of Justice, Office of Justice Programs, Office for Civil Rights or to [name of intermediary that awarded funds to the organization].

We must give you this written notice before you enroll in our program or receive services from the program.

Appendix B to Part 38—Beneficiary Referral Request

If you object to receiving services from us based on the religious character of our organization, please complete this form and return it to the program contact identified above. If you object, we will make reasonable efforts to refer you to another service provider. We cannot guarantee, however, that in every instance, an alternative provider will be available. With your consent, we will follow up with you or the organization to which you were referred to determine whether you contacted that organization.

Please check if applicable:

( ) I want to be referred to another service provider.

If you checked above that you wish to be referred to another service provider, please check one of the following:

( ) Please follow up with me or the service provider to which I was referred.

Name:

Best way to reach me (phone/address/email):

( ) Please do not follow up.

—End of Form—

DEPARTMENT OF LABOR

For the reasons discussed in the preamble, the Department of Labor amends 29 CFR part 2 as follows:

PART 2—GENERAL REGULATIONS

■ 36. The authority citation for part 2 is revised to read as follows:

Authority: 5 U.S.C. 301; Executive Order 13198, 66 FR 8497, 3 CFR 2001 Comp., p. 750; Executive Order 13279, 67 FR 77141, 3

CFR 2002 Comp., p. 258; Executive Order 13559, 75 FR 71319, 3 CFR 2011 Comp., p. 273.

Subpart D—Equal Treatment in Department of Labor Programs for Religious Organizations; Protection of Religious Liberty of Department of Labor Social Service Providers and Beneficiaries

■ 37. Amend § 2.31 by revising paragraphs (a) and (f) to read as follows:

§ 2.31 Definitions.

* * * * *

(a) The term *Federal financial assistance* means assistance that non-Federal entities (including State and local governments) receive or administer in the form of grants, contracts, loans, loan guarantees, property, cooperative agreements, direct appropriations, or other direct or indirect assistance, but does not include a tax credit, deduction or exemption. Federal financial assistance may be *direct* or *indirect.*

(1) The term *direct Federal financial assistance* or *Federal financial assistance provided directly* means that the Government or a DOL social service intermediary provider under this part selects the provider and either purchases services from that provider (*e.g.,* via a contract) or awards funds to that provider to carry out a service (*e.g.,* via grant or cooperative agreement). In general, Federal financial assistance shall be treated as direct, unless it meets the definition of *indirect Federal financial assistance* or *Federal financial assistance provided indirectly.*

(2) The term *indirect Federal financial assistance* or *Federal financial assistance provided indirectly* means that the choice of the service provider is placed in the hands of the beneficiary, and the cost of that service is paid through a voucher, certificate, or other similar means of government-funded payment. Federal financial assistance provided to an organization is considered *indirect* when:

(i) The Government program through which the beneficiary receives the voucher, certificate, or other similar means of Government-funded payment is neutral toward religion;

(ii) The organization receives the assistance as a result of a decision of the beneficiary, not a decision of the government; and

(iii) The beneficiary has at least one adequate secular option for the use of the voucher, certificate, or other similar means of Government-funded payment.

(3) The recipient of sub-awards received through programs administered by States or other intermediaries that are themselves recipients of Federal financial assistance (*e.g.,* local areas that receive within-state allocations to provide workforce services under title I of the Workforce Innovation and Opportunity Act) are not considered recipients of *indirect Federal financial assistance* or recipients of *Federal financial assistance provided indirectly* as those terms are used in Executive Order 13559. These recipients of sub-awards are considered recipients of direct Federal financial assistance.

* * * * *

(f) The term *DOL social service intermediary provider* means any DOL social service provider, including a non-governmental organization, that, as part of its duties, selects subgrantees to receive DOL support or subcontractors to provide DOL-supported services, or has the same duties under this part as a governmental entity.

* * * * *

■ 38. Amend § 2.32 by revising paragraph (b) introductory text and paragraph (c) to read as follows:

§ 2.32 Equal participation of religious organizations.

* * * * *

(b) A religious organization that is a DOL social service provider retains its independence from Federal, State, and local governments and must be permitted to continue to carry out its mission, including the definition, development, practice, and expression of its religious beliefs, subject to the provisions of § 2.33. Among other things, such a religious organization must be permitted to:

* * * * *

(c) A grant document, contract or other agreement, covenant, memorandum of understanding, policy, or regulation that is used by DOL, a State or local government administering DOL support, or a DOL social service intermediary provider must not require only religious organizations to provide assurances that they will not use direct DOL support for explicitly religious activities (including activities that involve overt religious content, such as worship, religious instruction, or proselytization). Any such requirements must apply equally to both religious and other organizations. All organizations, including religious ones, that are DOL social service providers must carry out DOL-supported activities in accordance with all applicable legal and programmatic requirements, including those prohibiting the use of direct DOL support for explicitly religious activities (including activities that involve overt religious content, such as worship, religious instruction, or proselytization). A grant document, contract or other agreement, covenant, memorandum of understanding, policy, or regulation that is used by DOL, a State or local government, or a DOL social service intermediary provider in administering a DOL social service program must not disqualify organizations from receiving DOL support or participating in DOL programs on the grounds that such organizations are motivated or influenced by religious faith to provide social services, have a religious character or affiliation, or lack a religious component.

■ 39. Amend § 2.33 by revising paragraph (a), paragraph (b)(1), the introductory text of paragraph (b)(3), and paragraph (c) to read as follows:

§ 2.33 Responsibilities of DOL, DOL social service providers and State and local governments administering DOL support.

(a) Any organization that participates in a program funded by federal financial assistance shall not, in providing services or in outreach activities related to such services, discriminate against a current or prospective program beneficiary on the basis of religion, religious belief, a refusal to hold a religious belief, or a refusal to attend or participate in a religious practice. However, an organization that participates in a program funded by indirect financial assistance need not modify its program activities to accommodate a beneficiary who chooses to expend the indirect aid on the organization's program. This requirement does not preclude DOL, DOL social service intermediary providers, or State or local governments administering DOL support from accommodating religion in a manner consistent with the Establishment Clause of the First Amendment to the Constitution.

(b)(1) DOL, DOL social service intermediary providers, DOL social service providers, and State and local governments administering DOL support must ensure that they do not use direct DOL support for explicitly religious activities (including activities that involve overt religious content such as worship, religious instruction, or proselytization). DOL social service providers must be permitted to offer explicitly religious activities so long as they offer those activities separately in time or location from social services receiving direct DOL support, and participation in the explicitly religious activities is voluntary for the beneficiaries of social service programs receiving direct DOL support. For example, participation in an explicitly religious activity must not be a condition for participating in a directly-supported social service program.

* * * * *

(3) Notwithstanding the requirements of paragraph (b)(1) of this section, and to the extent otherwise permitted by Federal law (including constitutional requirements), direct DOL support may be used to support explicitly religious activities (including activities that involve overt religious content such as worship, religious instruction, or proselytization), and such activities need not be provided separately in time or location from other DOL-supported activities, under the following circumstances:

* * * * *

(c) If a DOL social service intermediary provider, acting under a contract, grant, or other agreement with the Federal Government or with a State or local government that is administering a program supported by Federal financial assistance, is given the authority under the contract, grant, or agreement to select non-governmental organizations to provide services funded by the Federal Government, the DOL social service intermediary provider must ensure compliance with the provisions of Executive Order 13279, as amended by Executive Order 13559, and any implementing rules or guidance, by the recipient of a contract, grant or agreement. If the DOL social service intermediary provider is a non-governmental organization, it retains all other rights of a non-governmental organization under the program's statutory and regulatory provisions.

§§ 2.34, 2.35, and 2.36 [Redesignated as §§ 2.36, 2.37, and 2.38]

■ 40. Redesignate §§ 2.34, 2.35, and 2.36 as § 2.36, § 2.37, and § 2.38, respectively.

■ 41. Add new § 2.34 and § 2.35 to subpart D to read as follows:

§ 2.34 Beneficiary protections: written notice.

(a) *Contents.* Religious organizations providing social services to beneficiaries under a DOL program supported by direct Federal financial assistance must give written notice to beneficiaries and prospective beneficiaries of certain protections. Such notice must be given in a manner prescribed by DOL, and state that:

(1) The organization may not discriminate against a beneficiary or prospective beneficiary on the basis of religion or religious belief, a refusal to hold a religious belief, or a refusal to attend or participate in a religious practice;

(2) The organization may not require beneficiaries to attend or participate in any explicitly religious activities (including activities that involve overt religious content such as worship, religious instruction, or proselytization) that are offered by our organization, and any participation by beneficiaries in such activities must be purely voluntary;

(3) The organization must separate out in time or location any privately-funded explicitly religious activities (including activities that involve overt religious content such as worship, religious instruction, or proselytization) from activities supported with direct Federal financial assistance;

(4) If a beneficiary objects to the religious character of the organization, the organization must make reasonable efforts to identify and refer the beneficiary to an alternative provider to which the beneficiary has no objection. The organization cannot guarantee, however, that in every instance, an alternative provider will be available; and

(5) Beneficiaries or prospective beneficiaries may report violations of these protections to, or file a written complaint of any denials of services or benefits by an organization with, the U.S. Department of Labor's Civil Rights Center. The required language of the notice is set forth in appendix A to these regulations and may be downloaded from the Civil Rights Center's Web site at *http://www.dol.gov/oasam/programs/crc* or at the Center for Faith-Based and Neighborhood Partnerships' Web site at *http://www.dol.gov/cfbnp.* DOL social service providers may post and distribute exact duplicate copies of the notice, including through electronic means.

(b) *Timing of notice.* This written notice must be given to beneficiaries prior to the time they enroll in the program or receive services from such programs. When the nature of the service provided or exigent circumstances make it impracticable to provide such written notice in advance of the actual service, DOL social service providers must advise beneficiaries of their protections at the earliest available opportunity.

(c) *Applicability.* The obligations in this subsection apply only to religious organizations providing services under social service programs administered in the United States.

§ 2.35 Beneficiary protections: referral requirements.

(a) If a beneficiary or prospective beneficiary of a social service program supported by direct DOL financial assistance objects to the religious character of an organization that provides services under the program, that organization must promptly undertake reasonable efforts to identify and refer the beneficiary or prospective beneficiary to an alternative provider to which the beneficiary or the prospective beneficiary has no objection.

(b) A referral may be made to another religious organization, if the beneficiary has no objection to that provider. But if the beneficiary requests a secular provider, and a secular provider is available, then a referral must be made to that provider.

(c) Except for services provided by telephone, internet, or similar means, the referral must be to an alternative provider that is in reasonable geographic proximity to the organization making the referral and that offers services that are similar in substance and quality to those offered by that organization. The alternative provider also must have the capacity to accept additional clients.

(d) When the organization makes a referral to an alternative provider, the organization shall maintain a record of that referral for review by the awarding entity. When the organization determines that it is unable to identify an alternative provider, the organization shall promptly notify and maintain a record for review by the awarding entity. If the organization is unable to identify an alternative provider, the awarding entity shall determine whether there is any other suitable alternative provider to which the beneficiary may be referred.

(e) A DOL social service intermediary provider that receives a request for assistance in identifying an alternative provider may request assistance from DOL.

(f) The obligations in this section apply only to religious organizations providing services under social service programs administered in the United States.

■ 42. Add new § 2.39 to subpart D to read as follows:

§ 2.39 Political or religious affiliation.

Decisions about awards of Federal financial assistance must be free from political interference or even the appearance of such interference and must be made on the basis of merit, not on the basis of religion or religious belief or lack thereof.

■ 43. Add a new appendix A to part 2 and appendix B to part 2 to read as follows:

Appendix A to Part 2—Notice of Beneficiary Religious Liberty Protections

[Insert Name of Organization]:

[Insert Name of Program]:

[Insert Contact information for Program Staff (name, phone number, and email address, if appropriate)]:

Because this program is supported in whole or in part by financial assistance from the Federal Government, we are required to let you know that:

(1) We may not discriminate against you on the basis of religion or religious belief, a refusal to hold a religious belief, or a refusal to attend or participate in a religious practice;

(2) We may not require you to attend or participate in any explicitly religious activities (including activities that involve overt religious content such as worship, religious instruction, or proselytization) that are offered by our organization, and any participation by beneficiaries in such activities must be purely voluntary;

(3) We must separate out in time or location any privately-funded explicitly religious activities (including activities that involve overt religious content such as worship, religious instruction, or proselytization) from activities supported with direct Federal financial assistance;

(4) If you object to the religious character of an organization, we must make reasonable efforts to identify and refer you to an alternative provider to which you have no objection. We cannot guarantee, however, that in every instance, an alternative provider will be available; and

(5) You may report violations of these protections to, or file a written complaint of any denials of services or benefits by an organization, with the U.S. Department of Labor's Civil Rights Center, 200 Constitution Ave. NW., Room N–4123, Washington, DC 20210, or by email to *CivilRightsCenter@dol.gov*.

This written notice must be given to you prior to the time you enroll in the program or receive services from such programs, unless the nature of the service provided or urgent circumstances makes it impracticable to provide such notice in advance of the actual service. In such an instance, this notice must be given to you at the earliest available opportunity.

—End of Form —

Appendix B to Part 2—Beneficiary Referral Request

If you object to receiving services from us based on the religious character of our organization, please complete this form and return it to the program contact identified above. If you object, we will make reasonable efforts to refer you to another service provider. With your consent, we will follow up with you or the organization to which you were referred to determine whether you contacted that organization.

Please check if applicable:

( ) I want to be referred to another service provider.

If you checked above that you wish to be referred to another service provider, please check one of the following:

( ) Please follow up with me.

Name:

Best way to reach me (phone/address/email):

( ) Please follow up with the other service provider.

( ) Please do not follow up.

—End of Form—

DEPARTMENT OF VETERANS AFFAIRS

For the reasons set out in the preamble, the Department of Veterans Affairs adds 38 CFR part 50 and amends parts 61 and 62 as follows:

■ 44. Add part 50 to read as follows:

PART 50—RELIGIOUS AND COMMUNITY ORGANIZATIONS: PROVIDING BENEFICIARY PROTECTIONS TO POLITICAL OR RELIGIOUS AFFILIATION

Sec.
50.1 Religious organizations; general provisions.
50.2 Beneficiary protections; written notice.
50.3 Beneficiary protections; referral requirements.
50.4 Political or religious affiliation.

Authority: 38 U.S.C. 501 and as noted in specific sections.

§ 50.1 Religious organizations; general provisions.

(a) A faith-based organization that applies for, or participates in, a social service program (as defined in Executive Order 13279) supported with Federal financial assistance (as defined in Executive Order 13279) may retain its independence and may continue to carry out its mission, including the definition, development, practice, and expression of its religious beliefs, provided that it does not use direct Federal financial assistance that it receives (including through a prime or sub-award) to support or engage in any explicitly religious activities (including activities that involve overt religious content such as worship, religious instruction, or proselytization), or in any other manner prohibited by law. Direct Federal financial assistance may not be used to pay for equipment or supplies to the extent they are allocated to such activities. The use of indirect Federal financial assistance is not subject to this restriction. Nothing in this part restricts the VA's authority under applicable Federal law to fund activities, such as the provision of chaplaincy services, that can be directly funded by the Government consistent with the Establishment Clause.

(b)(1) Direct Federal financial assistance or Federal financial assistance provided directly means that the government or an intermediary as defined in paragraph (d) of this section selects the provider and either purchases services from that provider (*e.g.*, via a contract) or awards funds to that provider to carry out a service (*e.g.*, via grant or cooperative agreement). Federal financial assistance shall be treated as direct, unless it meets the definition of indirect Federal financial assistance or Federal financial assistance provided indirectly in paragraph (b)(2) of this section.

(2) Indirect Federal financial assistance or Federal financial assistance provided indirectly means that the choice of the service provider is placed in the hands of the beneficiary, and the cost of that service is paid through a voucher, certificate, or other similar means of government-funded payment.

(3) Federal financial assistance provided to an organization is considered indirect when:

(i) The government program through which the beneficiary receives the voucher, certificate, or other similar means of government funded payment is neutral toward religion;

(ii) The organization receives the Federal financial assistance as a result of a decision of the beneficiary, not a decision of the government; and

(iii) The beneficiary has at least one adequate secular option for the use of the voucher, certificate, or other similar means of government-funded payment.

(c) The recipients of sub-grants that receive Federal financial assistance through State-administered programs are not considered recipients of indirect Federal financial assistance (or recipients of Federal funds provided indirectly) as those terms are used in Executive Order 13559.

(d) Intermediary means an entity, including a non-governmental organization, acting under a contract, grant, or other agreement with the Federal Government or with a State or local government, that accepts Federal financial assistance and distributes that assistance to other organizations that, in turn, provide government-funded social services. In these regulations, the terms intermediary and pass-through entity may be used interchangeably.

(Authority: 2 CFR 200.74)

(e) If an intermediary, acting under a contract, grant, or other agreement with VA or with a State or local government that is administering a program supported by VA financial assistance, is given the authority under the contract, grant, or agreement to select non-governmental organizations to provide services funded by VA, the intermediary must select any providers to receive direct financial assistance in a manner that does not favor or disfavor organizations on the basis of religion or religious belief and ensure compliance with the provisions of Executive Order 13279, as amended by Executive Order 13559, and any implementing rules or guidance by the recipient of a contract, grant or agreement. If the intermediary is a non-governmental organization, it retains all other rights of a non-governmental organization under the program's statutory and regulatory provisions.

(f) Any organization that participates in a program funded by Federal financial assistance shall not, in providing services or in outreach activities related to such services, discriminate against a program beneficiary or prospective program beneficiary on the basis of religion, religious belief, a refusal to hold a religious belief, or a refusal to attend or participate in a religious practice. However, an organization that participates in a program funded by indirect financial assistance need not modify its program activities to accommodate a beneficiary who chooses to expend the indirect aid on the organization's program.

§ 50.2 Beneficiary protections; written notice.

(a) Faith-based or religious organizations providing social services to beneficiaries under a VA program supported by direct VA financial assistance must give written notice to beneficiaries and prospective beneficiaries of certain protections. Such notice must be given in a manner prescribed by VA. The notice will state that:

(1) The organization may not discriminate against beneficiaries on the basis of religion or religious belief, a refusal to hold a religious belief, or a refusal to attend or participate in a religious practice;

(2) The organization may not require beneficiaries to attend or participate in any explicitly religious activities that are offered by the organization, and any participation by beneficiaries in such activities must be purely voluntary;

(3) The organization must separate in time or location any privately funded explicitly religious activities from activities supported by direct VA financial assistance;

(4) If a beneficiary objects to the religious character of the organization, the organization will undertake reasonable efforts to identify and refer the beneficiary to an alternative provider to which the prospective beneficiary has no objection; and

(5) Beneficiaries or perspective beneficiaries may report an organization's violations of these protections, including any denials of services or benefits by an organization, by contacting or filing a written complaint with, VA or an intermediary that awarded funds to the organization.

(b) This written notice must be given to beneficiaries prior to the time they enroll in the program or receive services from such program. When the nature of the service provided or exigent circumstances make it impracticable to provide such written notice in advance of the actual service, service providers must advise beneficiaries of their protections at the earliest available opportunity.

(c) Faith-based or religious organizations providing social services to beneficiaries under a VA program supported by indirect VA financial assistance are not required to give written notice to beneficiaries and prospective beneficiaries of the protections specified in subsection (a).

(The Office of Management and Budget has approved the information collection provisions in this section under control number 2900–0828.)

§ 50.3 Beneficiary protections; referral requirements.

(a) If a beneficiary or prospective beneficiary of a social service programs supported by VA objects to the religious character of an organization that provides services under the program, that organization must promptly undertake reasonable efforts to identify and refer the beneficiary to an alternative provider to which the prospective beneficiary has no objection.

(b) A referral may be made to another faith-based organization if the beneficiary has no objection to that provider. If the beneficiary requests a secular provider, and a secular provider is available, then a referral must be made to that provider.

(c) Except for services provided by telephone, internet, or similar means, the referral must be to an alternative provider that is in reasonable geographic proximity to the organization making the referral and that offers services that are similar in substance and quality to those offered by the organization. The alternative provider also must have the capacity to accept additional clients.

(d) If the organization determines that it is unable to identify an alternative provider, the organization shall promptly notify VA or the intermediary. If the organization is unable to identify an alternative provider, VA shall determine whether there is any other suitable alternative provider to which the beneficiary may be referred. An intermediary that receives a request for assistance in identifying an alternative provider may request assistance from VA.

§ 50.4 Political or religious affiliation.

Decisions about awards of Federal financial assistance must be free from political interference or even the appearance of such interference and must be made on the basis of merit, not on the basis of religion or religious belief or lack thereof.

(Authority: 38 U.S.C. 501)

PART 61—VA HOMELESS PROVIDERS GRANT AND PER DIEM PROGRAM

■ 45. The authority citation for part 61 continues to read as follows:

Authority: 38 U.S.C. 501, 2001, 2002, 2011, 2012, 2061, 2064.

Subpart F—Awards, Monitoring, and Enforcement of Agreements

■ 46. Amend § 61.64 by:

■ a. In paragraph (a), revising the last sentence.

■ b. In paragraph (b)(1)(i), removing "Inherently" and adding, in its place, "Explicitly".

■ c. In paragraphs (c), (d), and (g), removing all references to "inherently" and adding, in each place, "explicitly".

■ d. In paragraph (b)(2), removing the last sentence and adding two sentences in its place.

The revisions read as follows:

§ 61.64 Religious organizations.

(a) * * * Decisions about awards of Federal financial assistance must be free from political interference or even the appearance of such interference and must be made on the basis of merit, not on the basis of religion or religious belief or lack thereof.

(b) * * *

(2) * * * "Direct financial assistance" means that VA or an intermediary as defined in 38 CFR 50.1(d) selects the

provider and either purchases services from that provider (*e.g.,* via a contract) or awards funds to that provider to carry out a service (*e.g.,* via grant or cooperative agreement). Financial assistance shall be treated as direct, unless it meets the definition of indirect financial assistance in this paragraph.

* * * * *

PART 62—SUPPORTIVE SERVICES FOR VETERAN FAMILIES PROGRAM

■ 47. The authority citation for part 62 continues to read as follows:

Authority: 38 U.S.C. 501, 2044, and as noted in specific sections.

■ 48. Amend § 62.62 by:
■ a. In paragraph (a), revising the last sentence.
■ b. In paragraph (b)(1)(i), removing "Inherently" and adding, in its place, "Explicitly".
■ c. In paragraphs (c), (d), and (g), removing all references to "inherently" and adding, in each place, "explicitly".
■ d. In paragraph (b)(2), removing the last sentence and adding two sentences in its place.

The revisions read as follows:

§ 62.62 Religious organizations.

(a) * * * Decisions about awards of Federal financial assistance must be free from political interference or even the appearance of such interference and must be made on the basis of merit, not on the basis of religion or religious belief or lack thereof.

(b) * * *

(2) * * * "Direct financial assistance" means that VA or an intermediary as defined in 38 CFR 50.1(d) selects the provider and either purchases services from that provider (*e.g.,* via a contract) or awards funds to that provider to carry out a service (*e.g.,* via grant or cooperative agreement). Financial assistance shall be treated as direct, unless it meets the definition of indirect financial assistance in this paragraph.

* * * * *

DEPARTMENT OF HEALTH AND HUMAN SERVICES

For the reasons stated in the preamble, under the authority of 5 U.S.C. 301, the Department of Health and Human Services and the Administration for Children and Families, respectively, propose to amend 45 CFR parts 87 and 1050 as set forth below:

■ 49. Revise part 87 to read as follows:

PART 87—EQUAL TREATMENT FOR FAITH-BASED ORGANIZATIONS

Sec.
87.1 Definitions.
87.2 Applicability.
87.3 Grants.

Authority: 5 U.S.C. 301.

§ 87.1 Definitions.

(a) These are the definitions for terms used in this part. Different definitions may be found in Federal statutes or regulations that apply more specifically to particular program or activities.

(b) The terms *direct Federal financial assistance, Federal financial assistance provided directly, direct funding, and directly funded* mean that the government or a pass-through entity (under this part) selects the provider and either purchases services from that provider (*e.g.,* via a contract) or awards funds to that provider to carry out a service (*e.g.,* via grant or cooperative agreement). In general, Federal financial assistance shall be treated as direct, unless it meets the definition of "indirect Federal financial assistance" or "Federal financial assistance provided indirectly."

(c) The term *indirect Federal financial assistance* or *Federal financial assistance provided indirectly* means that the choice of the service provider is placed in the hands of the beneficiary, and the cost of that service is paid through a voucher, certificate, or other similar means of government-funded payment.

(1) Federal financial assistance provided to an organization is considered indirect when:

(i) The Government program through which the beneficiary receives the voucher, certificate, or other similar means of Government-funded payment is neutral toward religion;

(ii) The organization receives the assistance as a result of a decision of the beneficiary, not a decision of the government; and

(iii) The beneficiary has at least one adequate secular option for the use of the voucher, certificate, or other similar means of Government-funded payment.

(2) The recipients of sub-grants that receive Federal financial assistance through State-administered programs are not considered recipients of "indirect Federal financial assistance" [or recipients of "Federal funds provided indirectly"] as those terms are used in this part.

(d) *Pass-through entity* means a non-Federal entity that provides a subaward to a subrecipient to carry out part of a Federal program.

(e) *Recipient* means a non-Federal entity that receives a Federal award directly from a Federal awarding agency to carry out an activity under a Federal program. The term recipient does not include subrecipients.

§ 87.2 Applicability.

This part applies to grants awarded in HHS social service programs governed by either the Uniform Administrative Requirements, Cost Principles, and Audit Requirements at 45 CFR part 75 or Block Grant regulations at 45 CFR part 96, except as provided in paragraphs (a) and (b) of this section.

(a) *Discretionary grants.* This part is not applicable to the discretionary grant programs that are governed Substance Abuse and Mental Health Services Administration (SAMHSA) Charitable Choice regulations found at 42 CFR part 54a. This part is also not applicable to discretionary grant programs that are governed by the Community Services Block Grant (CSBG) Charitable Choice regulations at 45 CFR part 1050, with the exception of § 87.1 and § 87.3(i) through (l) which do apply to such CSBG discretionary grants. Discretionary grants authorized by the Child Care and Development Block Grant Act are also not governed by this part.

(b) *Formula and block grants.* This part does not apply to non-discretionary and block grant programs governed by the SAMHSA Charitable Choice regulations found at 42 CFR part 54, or the Temporary Assistance for Needy Families (TANF) Charitable Choice regulations at 45 CFR part 260. Block grants governed by the CSBG Charitable Choice regulations at 45 CFR part 1050 are not subject to this part, with the exception that § 87.1 and § 87.3(i) through (l) do apply to such CSBG block grants. This part is not applicable to Child Care and Development Block Grants governed by 45 CFR part 98.

§ 87.3 Grants.

(a) Faith-based or religious organizations are eligible, on the same basis as any other organization, to participate in any HHS awarding agency program for which they are otherwise eligible. Neither the HHS awarding agency, nor any State or local government and other pass-through entity receiving funds under any HHS awarding agency program shall, in the selection of service providers, discriminate for or against an organization on the basis of the organization's religious character or affiliation. As used in this section, "program" refers to activities supported by discretionary, formula or block grants.

(b) Organizations that apply for or receive direct financial assistance from an HHS awarding agency may not support or engage in any explicitly religious activities (including activities that involve overt religious content such as worship, religious instruction, or proselytization), as part of the programs or services funded with direct financial assistance from the HHS awarding agency, or in any other manner prohibited by law. If an organization conducts such activities, the activities must be offered separately, in time or location, from the programs or services funded with direct financial assistance from the HHS awarding agency, and participation must be voluntary for beneficiaries of the programs or services funded with such assistance. The use of indirect Federal financial assistance is not subject to this restriction. Nothing in this part restricts HHS's authority under applicable Federal law to fund activities, such as the provision of chaplaincy services, that can be directly funded by the Government consistent with the Establishment Clause.

(c) A faith-based or religious organization that participates in HHS awarding agency-funded programs or services will retain its independence from Federal, State, and local governments, and may continue to carry out its mission, including the definition, practice, and expression of its religious beliefs, provided that it does not use direct financial assistance from an HHS awarding agency (including through a prime or sub-award) to support or engage in any explicitly religious activities (including activities that involve overt religious content such as worship, religious instruction, or proselytization). A faith-based or religious organization may use space in its facilities to provide programs or services funded with financial assistance from the HHS awarding agency without removing religious art, icons, scriptures, or other religious symbols. In addition, a faith-based or religious organization that receives financial assistance from the HHS awarding agency retains its authority over its internal governance, and it may retain religious terms in its organization's name, select its board members on a religious basis, and include religious references in its organization's mission statements and other governing documents in accordance with all program requirements, statutes, and other applicable requirements governing the conduct of HHS funded activities.

(d) An organization that participates in any programs funded by financial assistance from an HHS awarding agency shall not, in providing services or in outreach activities related to such services, discriminate against a program beneficiary or prospective program beneficiary on the basis of religion, a religious belief, a refusal to hold a religious belief, or a refusal to attend or participate in a religious practice. However, an organization that participates in a program funded by indirect financial assistance need not modify its program activities to accommodate a beneficiary who chooses to expend the indirect aid on the organization's program.

(e) No grant document, agreement, covenant, memorandum of understanding, policy, or regulation that is used by an HHS awarding agency or a State or local government in administering financial assistance from the HHS awarding agency shall require only faith-based or religious organizations to provide assurances that they will not use monies or property for explicitly religious activities. Any restrictions on the use of grant funds shall apply equally to religious and non-religious organizations. All organizations that participate in HHS awarding agency programs, including organizations with religious character or affiliations, must carry out eligible activities in accordance with all program requirements and other applicable requirements governing the conduct of HHS awarding agency-funded activities, including those prohibiting the use of direct financial assistance to engage in explicitly religious activities. No grant document, agreement, covenant, memorandum of understanding, policy, or regulation that is used by the HHS awarding agency or a State or local government in administering financial assistance from the HHS awarding agency shall disqualify faith-based or religious organizations from participating in the HHS awarding agency's programs because such organizations are motivated or influenced by religious faith to provide social services, or because of their religious character or affiliation.

(f) A faith-based or religious organization's exemption from the Federal prohibition on employment discrimination on the basis of religion, set forth in section 702(a) of the Civil Rights Act of 1964, 42 U.S.C. 2000e–1, is not forfeited when the faith-based or religious organization receives direct or indirect financial assistance from an HHS awarding agency. Some HHS awarding agency programs, however, contain independent statutory provisions requiring that all recipients agree not to discriminate in employment on the basis of religion. Accordingly, recipients should consult with the appropriate HHS awarding agency program office if they have questions about the scope of any applicable requirement.

(g) In general, the HHS awarding agency does not require that a recipient, including a faith-based or religious organization, obtain tax-exempt status under section 501(c)(3) of the Internal Revenue Code to be eligible for funding under HHS awarding agency programs. Many grant programs, however, do require an organization to be a "nonprofit organization" in order to be eligible for funding. Funding announcements and other grant application solicitations that require organizations to have nonprofit status will specifically so indicate in the eligibility section of the solicitation. In addition, any solicitation that requires an organization to maintain tax-exempt status will expressly state the statutory authority for requiring such status. Recipients should consult with the appropriate HHS awarding agency program office to determine the scope of any applicable requirements. In HHS awarding agency programs in which an applicant must show that it is a nonprofit organization, the applicant may do so by any of the following means:

(1) Proof that the Internal Revenue Service currently recognizes the applicant as an organization to which contributions are tax deductible under section 501(c)(3) of the Internal Revenue Code;

(2) A statement from a State or other governmental taxing body or the State secretary of State certifying that:

(i) The organization is a nonprofit organization operating within the State; and

(ii) No part of its net earnings may benefit any private shareholder or individual;

(3) A certified copy of the applicant's certificate of incorporation or similar document that clearly establishes the nonprofit status of the applicant; or

(4) Any item described in paragraphs (g)(1) through (3) of this section, if that item applies to a State or national parent organization, together with a statement by the State or parent organization that the applicant is a local nonprofit affiliate.

(h) If a recipient contributes its own funds in excess of those funds required by a matching or grant agreement to supplement HHS awarding agency-supported activities, the recipient has the option to segregate those additional funds or commingle them with the Federal award funds. If the funds are commingled, the provisions of this section shall apply to all of the commingled funds in the same manner, and to the same extent, as the provisions apply to the Federal funds. With respect to the matching funds, the provisions of this section apply irrespective of whether such funds are commingled with Federal funds or segregated.

(i)(1) Faith-based or religious organizations providing social services in the United States to beneficiaries under an HHS program that is supported by direct Federal financial assistance must give written notice to beneficiaries or prospective beneficiaries of certain protections. This written notice must be given to beneficiaries prior to the time they enroll in the program or receive services from such programs. Notice must be given in a manner prescribed by the HHS awarding agency. This notice must state that:

(i) The organization may not discriminate against beneficiaries or prospective beneficiaries on the basis of religion, a religious belief, a refusal to hold a religious belief, or a refusal to attend or participate in a religious practice;

(ii) The organization may not require beneficiaries to attend or participate in any explicitly religious activities that are offered by the organization, and any participation by beneficiaries in such activities must be purely voluntary;

(iii) The organization must separate in time or location any privately funded explicitly religious activities from activities supported by direct Federal financial assistance;

(iv) If a beneficiary or prospective beneficiary objects to the religious character of the organization, the organization will undertake reasonable efforts to identify and refer the beneficiary to an alternative provider to which the beneficiary has no objection; however, the organization cannot guarantee that in every instance an alternative provider will be available; and

(v) Beneficiaries or prospective beneficiaries may report violations of these protections, including any denials of services or benefits that violate these regulations, by contacting or filing a written complaint with the HHS awarding entity.

(2) When the nature of the service provided or exigent circumstances make it impracticable to provide such written notice in advance of the actual service, service providers must advise beneficiaries of their protections at the earliest available opportunity.

(j) If a beneficiary or prospective beneficiary of a social service program supported by the HHS awarding agency objects to the religious character of an organization that provides services in the United States under the program, that organization must promptly undertake reasonable efforts to identify and refer the beneficiary to an alternative provider to which the beneficiary has no objection. A referral may be made to another faith-based or religious organization, if the beneficiary has no objection to that provider. But if the beneficiary requests a secular provider, and a secular provider is available, then a referral must be made to that provider. Except for services provided by telephone, internet, or similar means, the referral must be to an alternative provider that is in reasonable geographic proximity to the organization making the referral and that offers services that are similar in substance and quality to those offered by the organization. The alternative provider also must have the capacity to accept additional beneficiaries.

(k) When the organization determines that it is unable to identify an alternative provider, the organization must promptly notify the prime recipient entity from which it has received funds. The prime recipient of Federal financial assistance must notify the HHS awarding agency when a sub-recipient is unable to identify an alternative provider. If the organization is successful in making a referral, it shall maintain a record of the referral.

(l) Decisions about awards of Federal financial assistance must be free from political interference or even the appearance of such interference and must be made on the basis of merit, not on the basis of the religious affiliation, or lack thereof, of a recipient organization.

(m) If a pass-through entity, acting under a contract, grant, or other agreement with the Federal Government or with a State or local government that is administering a program supported by Federal financial assistance, is given the authority under the contract, grant, or agreement to select non-governmental organizations to provide services funded by the Federal Government, the pass-through entity must ensure compliance with the provisions of this part and any implementing regulations or guidance by the sub-recipient. If the pass-through entity is a non-governmental organization, it retains all other rights of a non-governmental organization under the program's statutory and regulatory provisions.

PART 1050—CHARITABLE CHOICE UNDER THE COMMUNITY SERVICES BLOCK GRANT ACT PROGRAMS

■ 50. The authority citation for part 1050 continues to read as follows:

Authority: 42 U.S.C. 9901 *et seq.*

■ 51. Amend § 1050.3 by revising paragraph (h) to read as follows:

§ 1050.3 What conditions apply to the Charitable Choice provisions of the CSBG Act?

* * * * *

(h) If a nongovernmental pass-through entity, acting under a grant, contract, or other agreement with the Federal, State or local government, is given the authority to select nongovernmental organizations to provide services under an applicable program, then the intermediate organization must ensure that the service provider complies with these Charitable Choice provisions and 45 CFR 87.1 and 87.3(i) through (l). The pass-through entity retains all other rights of a nongovernmental organization under the Charitable Choice provisions.

John B. King, Jr.,
Secretary of Education.

Dated: March 23, 2016.

Jeh Charles Johnson,
Secretary, U.S. Department of Homeland Security.

Dated: March 25, 2016.

Thomas J. Vilsack,
Secretary, Department of Agriculture.

Dated: March 22, 2016.

J. Mark Brinkmoeller,
Director, Center for Faith-Based and Community Initiatives, USAID.

Julián Castro,
Secretary, Department of Housing and Urban Development.

Dated: March 28, 2016.

Loretta E. Lynch,
Attorney General.

Thomas E. Perez,
Secretary of Labor, Department of Labor.

Dated: March 21, 2016.

Robert D. Snyder,
Chief of Staff, U.S. Department of Veterans Affairs.

Dated: March 21, 2016.

Sylvia M. Burwell,
Secretary, Department of Health and Human Services.

Note: The following appendices will not appear in the Code of Federal Regulations.

APPENDIX E—DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT MODEL WRITTEN NOTICE OF BENEFICIARY RIGHTS

Name of Organization:
Name of Program:
Contact Information for Program Staff (name, phone number, and email address, if appropriate):

Because this program is supported in whole or in part by direct Federal financial assistance from the Federal Government, we are required to let you know that:

- We may not discriminate against you on the basis of religion, religious belief, a refusal to hold a religious belief, or a refusal to attend or participate in a religious practice;
- We may not require you to attend or participate in any explicitly religious activities that are offered by us, and any participation by you in these activities must be purely voluntary;
- We must separate, in time or location, any privately funded explicitly religious activities from activities supported by direct Federal financial assistance;
- If you object to the religious character of our organization, we must make reasonable efforts to identify and refer you to an alternative provider to which you have no such objection; and
- You may report an organization's violations of these protections, including any denial of services or benefits, by contacting or filing a written complaint to HUD [or the intermediary, if applicable].

We must give you this written notice before you enroll in our program or activity, as required by 24 CFR 5.109.

BENEFICIARY REFERRAL REQUEST

If you object to receiving services from us based on the religious character of our organization, please complete this form and return it to the program contact identified above. Your use of this form is voluntary.

If you object to the religious character of our organization, we must make reasonable efforts to identify and refer you to an alternative provider to which you have no such objection. We cannot guarantee, however, that in every instance, an alternative provider will be available. With your consent, we will follow up with you or the organization to which you are referred to determine whether you have contacted that organization.

( ) Please check if you want to be referred to another provider.

Please provide the following information if you want us to follow up with you:

Your Name:

Best way to reach you (phone/address/email):

Please provide the following information if you want us to follow up with the provider only.

Your Name:

You are permitted to withhold your name, though if you choose to do so, we will be unable to follow up with you or the provider about your referral.

( ) Please check if you do not want follow-up.

FOR STAFF USE ONLY

Date of Objection:

Referral (check one):

( ) Individual was referred to (name of alternative provider and contact information):

( ) Individual left without a referral

( ) No alternative provider is available—summarize below what efforts you made to identify an alternative (including reaching out to HUD or the intermediary, if applicable):

1. Follow-up date:

( ) Individual contacted alternative provider

( ) Individual did not contact alternative provider

2. Staff name and initials:

–End of Form–

APPENDIX H—DEPARTMENT OF VETERANS AFFAIRS

OMB No. 2900–0828

Burden Hours: 3840 minutes

Expiration Date: XX/XX/XXXX

MODEL WRITTEN NOTICE OF BENEFICIARY RIGHTS

U.S. DEPARTMENT OF VETERANS AFFAIRS

Name of Organization:

Name of Program:

Contact Information for Program Staff (name, phone number, and email address, if appropriate):

____

____

____

____

Because this program is supported in whole or in part by financial assistance from the Federal Government, we are required to let you know that—

- We may not discriminate against you on the basis of religion, religious belief, refusal to hold a religious belief, or a refusal to attend or participate in a religious practice;
- We may not require you to attend or participate in any explicitly religious activities that are offered by us, and any participation by you in these activities must be purely voluntary;
- We must separate in time or location any privately funded explicitly religious activities from activities supported with direct Federal financial assistance;
- If you object to the religious character of our organization, we must make reasonable efforts to identify and refer you to an alternative provider to which you have no objection, we cannot guarantee, however, that in every instance an alternate provider will be available; and
- You may report violations of these protections including any denials of services or benefits to VA or the [awarding entity].

We must give you this written notice before you enroll in our program or receive services from the program.

BENEFICIARY REFERRAL REQUEST

If you object to receiving services from us based on the religious character of our organization, please complete this form and return it to the program contact identified above. If you object, we will make reasonable efforts to refer you to another service provider. With your consent, we will follow up with you or the organization to which you were referred to determine whether you contacted that organization.

Please check all that apply:

( ) I want to be referred to another service provider.

( ) Please follow up with me or the service provider to which I was referred.

Name:

Best way to reach me (phone/address/email):

( ) Please do not follow up.

This information will be used by VA National Grant & Per Diem Program Office to identify those beneficiaries who object to the religious character of the faith-based organization providing services; and to provide them with services from another faith-based or community organization. Once the beneficiaries complete and submit this form to the faith-based organization, then the form will be submitted to VA National Grant & Per Diem Program Office, 10770 N. 46th Street, Suite C–200 Tampa, FL 33617. The VA National Program Office will notify the faith-based organization that the form has been received via email or U.S. Mail. This form will be kept on internal file at VA for the purpose identifying the beneficiaries' treatment location and for data collection/metrics.

The Paperwork Reduction Act: This information collection is in accordance with the clearance requirements of section 3507 of the Paperwork Reduction Act of 1995. Public reporting burden for this collection of information is estimated to average 2 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Respondents should be aware that notwithstanding any other provision of law, no person shall be subject to any penalty for failing to comply with a collection of information if it does not display a currently valid

OMB control number. The purpose of this data collection is to determine eligibility for benefits.

Beneficiary Name (print):

Beneficiary Name (sign)

Date:

APPENDIX I—DEPARTMENT OF HEALTH AND HUMAN SERVICES

Appendix A to the HHS Preamble—Example Notice

Written Notice of Beneficiary Protections

Name of Organization:

Name of Program:

Contact Information for Program Staff (name, phone number, and email address, if appropriate): Because this program is supported in whole or in part by direct financial assistance from the Federal Government, we are required to let you know that—

- We may not discriminate against you on the basis of religion, a religious belief, a refusal to hold a religious belief, or a refusal to attend or participate in a religious practice;
- We may not require you to attend or participate in any explicitly religious activities that are offered by us, and any participation by you in these activities must be purely voluntary;
- We must separate in time or location any privately funded explicitly religious activities from activities supported with direct Federal financial assistance;
- If you object to the religious character of our organization, we must make reasonable efforts to identify and refer you to an alternative provider to which you have no objection; however, we cannot guarantee that in every instance an alternative provider will be available; and
- You may report violations of these protections, including any denials of services or benefits that violates these rules, by contacting or filing a written complaint with [fill in name of awarding agency/entity].

We must give you this notice before you enroll in our program or receive services from the program.

Beneficiary Referral Request

If you object to receiving services from us based on the religious character of our organization, please complete this form and return it to the program contact identified above. If you object, we will make reasonable efforts to refer you to another service provider. With your consent, we will follow up with you or the organization to which you were referred to determine whether you contacted that organization.

Please check if applicable:

( ) I want to be referred to another service provider

If you checked above that you wish to be referred to another service provider, please check one of the following:

( ) Please follow up with me.

Name:

Best way to reach me (phone/address/email):

( ) Please do not follow up.

[FR Doc. 2016–07339 Filed 3–31–16; 8:45 am]

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Part V

Federal Communications Commission

47 CFR Parts 73 and 74
Promoting Diversification of Ownership in the Broadcasting Services; Final Rule

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 73 and 74

[MB Docket Nos. 07–294, 10–103, MD Docket No. 10–234; FCC 16–1]

Promoting Diversification of Ownership in the Broadcasting Services

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: In this document, the Commission refines the collection of data reported on FCC Form 323, Ownership Report for Commercial Broadcast Stations, and FCC Form 323–E, Ownership Report for Noncommercial Broadcast Stations. Specifically, the Commission implements a Restricted Use FRN (RUFRN) within the Commission's Registration System (CORES) that individuals may use solely for the purpose of broadcast ownership report filings; eliminates the availability of the Special Use FRN (SUFRN) for broadcast station ownership reports, except in very limited circumstances; prescribes revisions to Form 323–E that conform reporting for noncommercial educational (NCE) broadcast stations more closely to those for commercial stations; and makes a number of significant changes to its reporting requirements that reduce the filing burdens on broadcasters, streamline the process, and improve data quality. These enhancements will enable the Commission to obtain data reflecting a more useful, accurate, and thorough assessment of minority and female broadcast station ownership in the United States while reducing certain filing burdens.

DATES: Effective May 4, 2016 The amendments to §§ 73.3615 and 74.797 contain new or revised information collection requirements that are not effective until approved by the Office of Management and Budget (OMB). The Commission will publish a document in the **Federal Register** announcing the effective date of these changes. A separate notice will be published in the **Federal Register** soliciting public and agency comments on the information collections and establishing a deadline for accepting such comments.

FOR FURTHER INFORMATION CONTACT: Jake Riehm, Industry Analysis Division, Media Bureau, FCC, (202) 418–2330. For additional information concerning the information collection requirements contained in the *Report and Order*, contact Cathy Williams at (202) 418–2918, or via the Internet at *PRA@fcc.gov.*

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, Second Report and Order, and Order on Reconsideration (*Second Report and Order*) in MB Docket Nos. 07–294, 10–103, and MD Docket Nos. 10–234; FCC 16–1, adopted January 8, 2016, and released January 20, 2016. The complete text of this document is available electronically in ASCII, Microsoft Word, and PDF formats via the search function on the FCC's Electronic Document Management System (EDOCS) Web page at *https://apps.fcc.gov/edocs_public/.* The document is also available electronically via the FCC's Electronic Comment Filing System (ECFS) Web page at *http://apps.fcc.gov/ecfs/.* In addition, the complete document is available for inspection and copying during regular business hours in the FCC Reference Information Center, 445 12th Street SW., Room CY–A257, Washington, DC 20554. To request materials in accessible formats for people with disabilities (Braille, large print, electronic files, audio format), send an email to *fcc504@fcc.gov* or call the FCC's Consumer and Governmental Affairs Bureau at (202) 418–0530 (voice), (202) 418–0432 (TTY).

Final Paperwork Reduction Act of 1995 Analysis

This document contains information collection requirements subject to the Paperwork Reduction Act of 1995 (PRA), Public Law 104–13. The requirements will be submitted to the Office of Management and Budget (OMB) for review under section 3507(d) of the PRA. OMB, the general public, and other Federal agencies will be invited to comment on the information collection requirements contained in this proceeding. The Commission will publish a separate document in the **Federal Register** at a later date seeking these comments. In addition, the Commission notes that pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, see 44 U.S.C. 3506(c)(4), the Commission seeks specific comment on how it might "further reduce the information collection burden for small business concerns with fewer than 25 employees."

Synopsis

I. Introduction

1. The Commission has a long-standing goal of promoting diversity in ownership of broadcast stations to ensure that diverse viewpoints and perspectives are available to the American people in the content they receive over the broadcast airwaves. In pursuit of this goal, the Commission has a long history of promulgating rules and regulations designed to foster diversity in terms of minority and female ownership in particular. In this *Report and Order, Second Report and Order, and Order on Reconsideration (Report and Order),* the Commission acts to improve the data available to analyze issues relevant to ownership and viewpoint diversity by refining the collection of data reported on FCC Form 323, Ownership Report for Commercial Broadcast Stations, and FCC Form 323–E, Ownership Report for Noncommercial Broadcast Stations.

2. A necessary precursor to the Commission's policy-making efforts in this area is the collection of comprehensive, reliable data reflecting the race, gender, and ethnicity of the owners and other interest holders in broadcast stations. Such data are essential to effectively study and analyze ownership trends, to assess the impact of Commission rules, and to provide a foundation for the adoption of new rules, among other things. To be useful for this purpose, to the greatest extent possible the data must be capable of being read, verified, searched, aggregated, and cross-referenced electronically. Moreover, for the Commission's broadcast ownership data to be complete, reliable, and usable for study and analysis, individuals reported on Forms 323 and 323–E must be uniquely identified. The enhancements described herein enable the Commission to obtain data reflecting a more useful, accurate, and thorough assessment of minority and female broadcast station ownership in the United States while reducing certain filing burdens. These improvements also address the directive from the U.S. Court of Appeals for the Third Circuit that the Commission obtain more and better data concerning broadcast ownership to support its rulemaking decisions.[1] Ultimately, the Commission believes that these actions will assist its future initiatives to promote diverse ownership.

3. Accordingly, pursuant to the Commission's statutory mandate contained in section 257 of the Telecommunications Act of 1996 (the 1996 Act) and section 309(j) of the Communications Act of 1934 (the Act) to promote opportunities for small businesses and women and minorities in the broadcasting industry, the Commission implements a Restricted

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[1] *See Prometheus Radio Project* v. *FCC,* 652 F.3d 431, 469, 471–72 (3d. Cir. 2011) (*Prometheus II*).

Use FRN (RUFRN) within the Commission's Registration System (CORES) that individuals may use solely for the purpose of broadcast ownership report filings. The Commission believes that the RUFRN will allow for sufficient unique identification of individuals listed on broadcast ownership reports without necessitating the disclosure to the Commission of individuals' full Social Security Numbers (SSNs). In light of the Commission's adoption of the RUFRN requirement, the Commission eliminates the availability of the Special Use FRN (SUFRN) for broadcast station ownership reports, except in very limited circumstances as further described herein. The Commission also prescribes revisions to Form 323–E that conform reporting for noncommercial educational (NCE) broadcast stations more closely to those for commercial stations, including information about race, gender, and ethnicity of existing, reportable attributable interest holders; the use of a unique identifier; and the biennial filing requirement. Finally, the Commission makes a number of significant changes to its reporting requirements that reduce the filing burdens on broadcasters, streamline the process, and improve data quality. These changes include extending the biennial filing deadline, reducing the number of filings required, improving the reporting of other broadcast and newspaper interests, and other modifications.

II. Background

4. The Commission has been engaged in a sustained effort to improve the quality, utility, and reliability of its broadcast ownership data. In 2009, the Commission substantially revised the biennial Form 323 to facilitate longitudinal comparative studies of broadcast station ownership. The changes also addressed flaws in the data collection process identified by the United States Government Accountability Office (GAO) and by researchers who had attempted to use the data submitted on previous versions of Form 323. GAO cited several shortcomings with the Commission's data collection process: (1) Exemptions from the biennial filing requirement for certain types of broadcast stations; (2) inadequate data quality procedures; and (3) problems with storage and retrieval. GAO noted that "more accurate, complete, and reliable [broadcast ownership] data would allow FCC to better assess the impact of its rules and regulations and allow the Congress to make more informed legislative decisions," and it "recommend[ed] that FCC take steps to improve the reliability and accessibility of its data on the gender, race, and ethnicity of broadcast outlet owners." [2]

5. To improve the quality of its broadcast ownership data, the Commission adopted several significant changes to Form 323 in the *323 Order,* 74 FR 25163, May 27, 2009, FCC 09–33, rel. May 5, 2009. First, it set a uniform "as of" date of October 1 for the ownership data being reported in the biennial filing and established a uniform filing deadline of November 1, requiring all filers to report their ownership interests as they exist on the "as of" date of the filing year and to submit their reports no later than one month thereafter. These uniform dates make it possible to discern statistically valid trends in minority and female broadcast ownership over time, which was not possible using the previous rolling filing deadlines, and to ensure the timely collection of the data. The Commission expanded the requirement to file Form 323 biennially to include sole proprietors and partnerships of natural persons, as well as low power television (LPTV) and Class A licensees.

6. In the *323 Order,* the Commission also concluded that an FRN should be reported for each interest holder reported on Form 323 and directed staff to revise Form 323 accordingly. The Commission delegated authority to staff to revisit the CORES FRN issue if additional changes to the form were necessary. In order "to further improve the ability of researchers and other users of the data to cross-reference information and construct ownership structures," the Media Bureau revised Form 323 to require that an FRN be reported for every interest holder reported on the form.[3] The Bureau also revised the instructions and questions in Form 323 to (1) clarify the information sought in the form; (2) ensure that the data are collected in machine-readable formats that can be imported into programs used to prepare economic and policy studies; and (3) simplify completion of the form by giving respondents menu or checkbox options to enter data. The Bureau included built-in checks and pre-fill capabilities to assure greater accuracy of the data reported and ease of completion of the form.

7. Accompanying the *323 Order* was a *Fourth Diversity Further Notice,* 74 FR 25205, May 27, 2009, FCC 09–33, rel. May 5, 2009, in which the Commission sought comments on changes to Form 323–E. The Commission sought comment on whether to seek race, gender, and ethnicity data from persons reported on Form 323–E in order to obtain data that would further the Commission's goal to advance diversity in the broadcast industry. Noting that many NCE broadcast station licensees are non-profit, non-stock entities or governmental organizations that are controlled by governing boards comprising members without a financial stake in the broadcast station, the Commission sought comment on how to define ownership in the noncommercial context. Among other things, the *Fourth Diversity Further Notice* sought comment on whether the Commission should adopt the same or similar modifications for Form 323–E as it did for Form 323 in the *323 Order* and whether the data quality measures adopted in the *323 Order* would be appropriate and sufficient to ensure that the data collected by Form 323–E are aggregable. The *Fourth Diversity Further Notice* also sought comment on whether to require low power FM (LPFM) stations to file a Form 323–E to collect ownership data on the licensees or to continue to exempt LPFM licensees from the filing requirements. The Commission will address issues in the *Fourth Diversity Further Notice* related to LPFM in a future order. The *Fourth Diversity Further Notice* was published in the **Federal Register** on May 27, 2009, with comments due on or before June 26, 2009, and reply comments due on or before July 13, 2009.

8. On August 11, 2009, the Commission submitted a revised Form 323 to the Office of Management and Budget (OMB) for approval pursuant to the Paperwork Reduction Act (PRA) requirements and published the **Federal Register** notice initiating a 60-day comment period.[4] Among the changes submitted was a requirement that each filer provide a CORES FRN for each reported attributable interest holder. Form 323 requires Respondents to list each of the officers, directors, stockholders, non-insulated partners, members and other persons or entities with a direct attributable interest in the Respondent. Many comments submitted to OMB objected to the revision requiring filers to report CORES FRNs for individuals holding attributable interests, arguing that it required them to provide SSNs to the Commission, which they claimed triggered privacy, data security, and identity theft

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[2] U.S. Gov't Accountability Office, GAO–08–383, Media Ownership: Economic Factors Influence the Number of Media Outlets in Local Markets, While Ownership by Minorities and Women Appears Limited and is Difficult to Assess, at 5 (2008).

[3] *323 Order,* 74 FR at 25165.

[4] Public Information Collection Requirement Submitted to OMB for Review and Approval, Comments Requested, 74 FR 40,188 (Aug. 11, 2009).

concerns. Commenters also suggested that obtaining CORES FRNs for reportable individuals would be burdensome, and that in some cases filers might not be able to obtain the CORES FRN for all individual attributable interest holders because individuals might be unwilling either to obtain CORES FRNs for themselves or to provide their SSNs to the filer for the purpose of obtaining CORES FRNs on their behalf. Two Petitions for Writs of Mandamus were filed with the U.S. Court of Appeals for the DC Circuit to stay the Commission's implementation of the revisions to Form 323. The law firm of Fletcher, Heald & Hildreth, P.L.C., on behalf of itself and various state broadcaster association clients, filed the first Petition on December 23, 2009, Doc. No. 09–1321, and the second Petition on May 28, 2010, Doc. No. 10–1117. Both were denied.

9. On October 6, 2009, the Office of the Managing Director (OMD) at the Commission submitted a letter to OMB addressing the comments filed in response to the revised Form 323. OMD explained that requiring CORES FRNs on Form 323 is an integral part of the Commission's effort to improve the quality, reliability, and usability of the collected data by eliminating inconsistencies and inadequacies in the data submitted. The Reply Letter rejected allegations that the Commission failed to comply with the notice requirements of the PRA or ran afoul of the Privacy Act. OMD also disputed commenters' objections that the CORES FRN requirement raised security and identity theft concerns. The Commission utilizes a "robust security architecture . . . for CORES that exceeds Federal guidelines and recommendations" and has deployed operational controls that comply with National Institute of Standards and Technology guidance.[5] OMD stated that the Commission's servers are securely located, that its databases are behind several firewalls, and that all servers and communications are monitored. The Reply Letter also noted that administrative access to the CORES application is limited and that all transmission of non-public data is encrypted.

10. The *323 Order* also directed staff to modify Form 323 to require those interest holders that would be attributable but for the single majority shareholder exemption and the exemption for interests held in eligible entities pursuant to the higher Equity/Debt Plus (EDP) thresholds adopted in the *Diversity Order* to be reported on the form. On October 15, 2009, the Commission addressed a petition for reconsideration, in which the National Association of Broadcasters (NAB) argued, *inter alia,* for reconsideration of elements of the *323 Order* regarding the collection of information of certain nonattributable interest holders on Form 323. In an opposition to NAB's petition for reconsideration, the Office of the United Church of Christ, Inc. (UCC), Benton Foundation, Common Cause, Media Alliance, and National Organization of Women Foundation (collectively, UCC et al.), supported the Commission's decision to collect ownership information from certain nonattributable interest holders. NAB disagreed on reply. Acknowledging that the Commission had not explicitly expressed its intention to require certain nonattributable interest holders to file information in its rulemaking notice, the Commission deleted the reporting requirements for the nonattributable interest holders and adopted the *Fifth Diversity Further Notice,* 78 FR 2934, Jan. 15, 2013, FCC 09–92, rel. Oct. 16, 2009. The *Fifth Diversity Further Notice,* released on October 16, 2009, proposed to collect ownership information from interest holders in a licensee that would be attributable but for the single majority shareholder exemption and those that would be attributable but for the higher EDP thresholds adopted in the *Diversity Order.* In the *Sixth Diversity Further Notice,* 78 FR 2925, Jan. 15, 2013, FCC 12–166, rel. Jan 3, 2013, the Commission sought comment, *inter alia,* on extending the CORES FRN requirement to those nonattributable interests described in the *Fifth Diversity Further Notice* in the event that the Commission requires that these interests be reported on Form 323. The Commission will address issues raised by and implicating proposals in the *Fifth Diversity Further Notice* in a future order.

11. On October 19, 2009, OMB approved the revised Form 323, which included the requirement that filers provide a CORES FRN for individuals holding an attributable interest in the licensee. On October 16, 2009, the Commission sent a subsequent letter to OMB acknowledging the Commission's action in the *323 MO&O,* 74 FR 56131, Oct. 30, 2009, FCC 09–92, rel. Oct. 16, 2009, to eliminate the reporting of certain nonattributable interest holders. After several delayed filing deadlines, the Commission set July 8, 2010 as the first biennial filing deadline using the revised Form 323. In response to industry concerns about filers' ability to obtain CORES FRNs from all individual interest holders due to individuals' concerns about privacy, security, and identity theft, the Media Bureau allowed filers, as an interim measure, to obtain an SUFRN for individuals (but not entities) reported on the form in lieu of obtaining a CORES FRN. When clicking a button on the electronic version of Form 323 to generate an SUFRN, filers were advised via a pop-up box that "[i]f, after using diligent and good-faith efforts," a filer is unable to obtain an SSN from an individual that must be reported on Form 323 in order to generate a CORES FRN, the filer may elect to automatically generate in the electronic Form 323 an SUFRN for that individual. The respondents were also informed that those who use an SUFRN on Form 323 would be deemed to be fully compliant with the filing obligations and the lack of a CORES-based FRN would not subject a filer to enforcement action. SUFRNs were available to filers for the 2009, 2011, and 2013 biennial filing periods. Filers were directed that SUFRNs, like CORES-based FRNs, must be used consistently.

12. In November 2009, Koerner & Olender, P.C., and Fletcher, Heald & Hildreth, P.L.C., filed petitions seeking reconsideration of the requirement to obtain CORES FRNs for individuals holding attributable interests, arguing that the CORES FRN requirement is overly burdensome and raises privacy and data security issues and that the Commission provided inadequate notice of the CORES FRN requirement. In the *Sixth Diversity Further Notice,* the Commission addressed petitioners' concerns for adequate notice of the CORES FRN requirement for individuals and sought comment on Koerner & Olender's request to "redefine or reinterpret" section 1.8002 of the Commission's rules. This *Report and Order* resolves the remaining issues raised in these petitions for reconsideration.

13. In June 2010, the Media Bureau initiated the *Review of Media Bureau Data Practices* proceeding to examine the Bureau's data practices to improve the way the Commission collects, uses and disseminates data. The Bureau solicited input concerning potential improvements to all of its existing data collections, including both the biennial and non-biennial sections of Forms 323 and 323–E. The Bureau defined "data collection" in "the broadest manner possible, to include all information collections approved by the Office of Management and Budget under the Paperwork Reduction Act, including

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[5] Letter from Walter Boswell, Acting Assoc. Managing Director, PERM, OMD, FCC, to Nicholas A. Fraser, OMB, at 9 (Oct. 6, 2009).

data that the Commission formally requires to be submitted and all information that must be retained by parties or disclosed to others." Forms 323 and 323–E were included in the inventory of data collections linked in the item. Among other things, the Bureau asked whether its various data collections should be continued or eliminated; whether the Bureau should collect additional data and for what purpose(s); how the Bureau's data collections could be improved; what burdens exist for the Commission, industry, and the public; and what potential improvements could be made concerning public access to, and Commission dissemination of, submitted data. The Commission received numerous comments in this proceeding, including two submissions—from NAB and the Minority Media and Telecommunications Council (MMTC)—that addressed issues related to the Commission's broadcast ownership report forms and data.

14. In December 2010, the Commission initiated another separate rulemaking proceeding in which it proposed to update CORES to enhance the Commission's data collection efforts and to improve customer interface with CORES. In the *CORES NPRM,* 76 FR 5652, Feb. 1, 2011, FCC 10–192, rel. Dec. 7, 2010, the Commission stated that, "[s]ince the creation of CORES, entities have been able to obtain multiple FRNs in order to permit different members of their corporate family to obtain their own individual FRNs, regardless of whether those entities had different taxpayer identification numbers ('TINs')." For entities, the TIN is generally their employer identification number (EIN), and for individuals, the TIN is generally their SSN. The Commission stated that it has had difficulty using CORES to identify all the FRNs an entity holds when the entity has used inconsistent TINs or did not provide a TIN to obtain an FRN through CORES. The Commission also observed that some filers erroneously invoked exceptions to the requirement to provide a TIN, making those entities or individuals difficult to track. The Commission proposed several options to resolve these issues. In addition, the Commission asked whether it should expand the availability of SUFRNs for purposes other than the filing of Form 323.

15. In July 2011, the U.S. Court of Appeals for the Third Circuit, as part of its review of the Commission's media ownership rules, vacated and remanded certain aspects of the *Diversity Order,* 73 FR 28361, May 16, 2008, FCC 07–217, rel. Mar. 5, 2008. The Third Circuit concluded that the Commission's decision to adopt a revenue-based eligible entity definition to facilitate ownership diversity was arbitrary and capricious because the Commission did not show how such a definition specifically would assist minorities and women, who were among the intended beneficiaries of the action. The court also remanded each of the measures adopted in the *Diversity Order* that relied on the eligible entity definition. The court found that the eligible entity definition was not supported by "data attempting to show a connection between the definition chosen and the goal of the measures adopted—increasing ownership of minorities and women," stressing that regulations seeking to increase ownership by women and minorities must be based on reliable data. The court stated that, "[a]t a minimum, in adopting or modifying its rules, the FCC must 'examine the relevant data and articulate a satisfactory explanation for its action[,] including a rational connection between the facts found and the choice made.'" The court also made plain that, "[i]f the Commission requires more and better data . . . it must get the data." The court stated that the actions taken in the *323 Order* and *Fourth Diversity Further Notice* to reliably analyze minority and female ownership "will, however, lay necessary groundwork for the Commission's actions on remand."

16. On November 14, 2012, the Media Bureau released the first electronic analysis of commercial broadcast ownership data submitted pursuant to the revised biennial reporting requirements for 2009 and 2011 (*2012 323 Report*). A subsequent report, released by the Bureau on June 27, 2014 (*2014 323 Report*), contained an analysis of the commercial broadcast ownership data submitted during the 2013 filing cycle. The data contained in the reports are "snapshots" of the status of minority and female ownership in the broadcast industry and are part of a planned series of biennial "snapshots" that can be used for trend analysis. The reports contain 100 pages of summary schedules and 30 spreadsheets of underlying data reflecting the Media Bureau's analysis of the Form 323 data, which can be further studied and manipulated by researchers and interested parties. Future, similar reports are contemplated reflecting additional biennial reporting periods. These reports provide detailed information by race, ethnicity, and gender concerning ownership of commercial television, radio, Class A television, and LPTV stations. For example, the *2012 323 Report* analyzed data for 1,348 full-power commercial television stations as of October 1, 2011. Members of racial minorities held majority voting interests in 30 stations, or 2.2 percent. Female owners held majority voting interests in 91 stations, or 6.8 percent. The *2012 323 Report* also analyzed data for 5,611 commercial FM stations as of October 1, 2011. Members of racial minorities held majority voting interests in 196 stations, or 3.5 percent, and female owners held majority voting interests in 323 stations, or 5.8 percent. Similarly, the *2012 323 Report* analyzed data for 3,830 commercial AM stations as of October 1, 2011. Members of racial minorities held majority voting interests in 237 stations, or 6.2 percent, and female owners held majority voting interests in 300 stations, or 7.8 percent. The *2014 323 Report* analyzed data for 1,386 full-power commercial television stations as of October 1, 2013. Members of racial minorities held majority voting interests in 41, or 3.0 percent, of those stations. Female owners held majority voting interests in 87 stations, or 6.3 percent. The *2014 323 Report* also analyzed data for 5,714 commercial FM stations as of October 1, 2013. Members of racial minorities held majority voting interests in 169, or 3.0 percent, of these stations, and female owners held majority voting interests in 383 stations, or 6.7 percent. The *2014 323 Report* also analyzed data for 3,737 commercial AM stations as of October 1, 2013. Members of racial minorities held majority voting interests in 225, or 6.0 percent, of these stations, and female owners held majority voting interests in 310 stations, or 8.3 percent. In preparing these reports, Commission staff observed difficulties with, and errors within, the broadcast ownership data submitted to the Commission. Upon review of the biennial ownership reports, Commission staff discovered that many commercial broadcast stations submitted reports with apparently inaccurate or insufficient data to permit electronic calculation of voting interests. As a result, such biennial ownership reports were not included in the Commission's analysis. Commission staff worked with numerous broadcasters to correct errors contained in their 2011 and 2013 biennial Form 323 filings via amendments, which allowed stations covered by those reports to be properly categorized for the *2012* and *2014 323 Reports.* In addition, Commission staff manually analyzed a large number of ownership reports, together with other available information, in order to assign certain

stations to the appropriate categories manually for purposes of the report. The *2012 323 Report* stated that the problems with the data stemmed, in part, from the "complexity of the information required to accurately file" the revised version of Form 323.

17. The Commission also sought public comment on both reports. On December 3, 2012, the Commission issued a Public Notice in the *2010 Quadrennial Regulatory Review* proceeding offering parties the opportunity to comment on the *2012 323 Report* (*2012 323 Report PN*). The *2012 323 Report PN* broadly sought "additional comment on data contained in [the *2012 323 Report*]," specifically referencing the Commission's efforts "to improve its collection and analysis of broadcast ownership information" and make "improvements to the reliability and utility of the data reported in FCC Form 323." Some commenters responding to the *2012 323 Report PN* expressed concern that the incomplete and inaccurate ownership data submitted to the Commission render it difficult to accurately track broadcast ownership trends from 2009 and 2011. One commenter suggested that the manner in which the Commission currently provides broadcast ownership data from Form 323 to the public does not meet the objective that such data be capable of being electronically searched, aggregated, or cross referenced. On June 27, 2014, the Bureau issued an Order as part of the *2014 Quadrennial Regulatory Review* proceeding seeking comment on the *2014 323 Report*. Certain commenters responding to the data contained in the *2014 323 Report* acknowledged that the Commission has taken steps to improve the quality of its broadcast ownership data, but asserted that the Commission should do more to make its broadcast ownership data easier to use, search, aggregate, and cross reference electronically, for the benefit of studies and analysis.

18. On January 3, 2013, the Commission released its *Sixth Diversity Further Notice*, in which it sought comment on the Commission's requirement that licensees and other entities filing Form 323 provide a CORES FRN—which requires submission of an SSN or TIN to the Commission—for attributable individuals. Noting that the CORES FRN enables unique identification of individuals, the Commission sought comment on its proposal to eliminate the interim SUFRN. The Commission reasoned that SUFRNs do not provide a reliable means of linking a reported interest holder to a unique individual and the continued use of the SUFRN undermines the Commission's efforts to "accurately ascertain the nature and extent of minority and female ownership of broadcast properties." Pointing out that the Third Circuit in *Prometheus II* highlighted the importance of reliable data to support rulemaking initiatives, the *Sixth Diversity Further Notice* asked for comments on the importance of the CORES FRN as a unique identifier for increasing the quality, cross-referencing, aggregability, and searchability of broadcast station ownership data. In discussing the considerations attendant to requiring that attributable interest holders submit an SSN to the Commission, the *Sixth Diversity Further Notice* noted that other governmental agencies require SSNs "to ensure program integrity and for statistical and research purposes." The Commission invited comment on its tentative conclusion that the Privacy Act does not prohibit adoption of the CORES FRN proposal and asked commenters to discuss the degree of the risk to privacy the proposal poses in the event that commenters believe that the requirement presents such a risk. The Commission also noted that it has already adopted a Privacy Act System of Records Notice (SORN) for CORES and with respect to the Form 323 requirement, which applies to any personally identifiable information required by Form 323 and CORES in connection with the CORES FRN registration process. The *Sixth Diversity Further Notice* also sought comment on whether the Commission should amend section 1.8002 of the Commission's rules, which provides that persons "doing business" with the Commission must obtain a CORES FRN. The Commission also asked whether it should continue to permit filers to use the SUFRN in the event that reportable individuals are unwilling to provide their SSN to a third party or unwilling to obtain and provide a CORES FRN. The Commission also proposed to extend the CORES FRN requirement to all entities and individuals reported on Form 323–E and invited comment on potential costs and benefits associated with that requirement. The *Sixth Diversity Further Notice* proposed to extend the filing deadline for broadcast ownership reports to give filers an additional 30 days. As noted above, the *Sixth Diversity Further Notice* also sought additional comment on proposals regarding Form 323 submitted in the Review of Media Bureau Data Practices proceeding. The notice specifically sought comment on certain proposals NAB and MMTC submitted in that proceeding and sought input on the costs and benefits associated with those proposals. The *Sixth Diversity Further Notice* was published in the **Federal Register** on January 15, 2013. Comments on the *Sixth Diversity Further Notice* were due on or before February 14, 2013 and reply comments due on or before March 1, 2013.

19. The Commission received significant opposition in response to the *Sixth Diversity Further Notice's* proposal that all attributable interest holders submit an SSN to the Commission in order to receive a CORES FRN for use on broadcast ownership reports. As a result, on February 12, 2015, the Commission released the *Seventh Diversity Further Notice*, 80 FR 10442, Feb. 26, 2015, FCC 15–19, which proposed to implement a new RUFRN—an identifier that would not require the submission of an SSN to the Commission—for use on Form 323 and Form 323–E filings. This proposal reflected the Commission's effort to balance its goal of collecting reliable ownership data with the privacy, data security, and identity theft concerns of those individuals with attributable interests in broadcast stations. As an alternative to the CORES FRN, the proposed RUFRN would be generated when an individual submits his or her full name, residential address, date of birth, and only the last four digits of the individual's SSN.

20. The Commission reiterated its position that it must be able to uniquely identify all parties, including individuals, reported on broadcast ownership reports and tentatively concluded that the RUFRN "will provide reasonable assurance of unique identification" of attributable individuals and is a superior method of uniquely identifying individuals than the existing SUFRN. The Commission sought comment on what additional information, if any, the Commission could require to ensure that the data collected on the ownership reports will be reliable.

21. The Commission also acknowledged that commenters to the *Sixth Diversity Further Notice* argued that a CORES FRN cannot serve as a unique identifier, because multiple FRNs could be associated with a single TIN/SSN; an FRN may be associated with no TIN/SSN or an incorrect one; or outside groups do not have access to the underlying TIN/SSN information. The *Seventh Diversity Further Notice* stated that, to guard against a single individual obtaining multiple RUFRNs, "the CORES system will be programmed to verify that the submitted information is complete and does not duplicate any

information that is already associated with an RUFRN in CORES." In the *Seventh Diversity Further Notice,* the Commission acknowledged the privacy and security concerns raised in the *Sixth Diversity Further Notice* as it related to the requirement that interest holders submit an SSN, and reiterated that its systems, including CORES, have a security infrastructure in place that exceeds Federal guidelines. The Commission also sought comment on its tentative conclusion that the Privacy Act does not bar the adoption of the RUFRN and its implementation on Form 323 and Form 323–E. Moreover, the Commission noted that it has already adopted a Privacy Act SORN for CORES and with respect to the Form 323 requirement, and, if necessary, the SORN can be modified to address any changes required by the implementation of the RUFRN on Form 323 and Form 323–E. The *Seventh Diversity Further Notice* also emphasized that the benefits of improved data collection outweigh any *de minimis* costs or burdens associated with obtaining a CORES FRN or RUFRN. The Commission explained that an individual that already has a CORES FRN may continue to report it on the Form 323 or Form 323–E filings and that there is no need to obtain an RUFRN.

22. The Commission sought comment on these subjects and its conclusions that the RUFRN proposal will improve the reliability and usability of the broadcast report data. The *Seventh Diversity Further Notice* also sought comment on its conclusion that the RUFRN as a unique identifier will permit the Commission to implement burden-reducing modifications that could reduce the types of errors identified in the 2009, 2011, and 2013 filing periods.

23. The Commission also sought comment on extending the RUFRN to Form 323–E in the event that changes proposed in the pending *Fourth and Sixth Diversity Further Notices* are adopted. As discussed above, the *Fourth Diversity Further Notice* proposed to collect race, gender, and ethnicity information from attributable individuals reported on Form 323–E, and the *Sixth Diversity Further Notice* proposed to extend the CORES FRN reporting requirement to noncommercial stations. In the *Seventh Diversity Further Notice,* the Commission proposed that, in the event those proposed changes are adopted, individuals reported on Form 323–E also may be permitted to obtain and provide an RUFRN in lieu of a CORES FRN for use on the broadcast ownership report filings. The Commission further acknowledged the comments opposing the *Sixth Diversity Further Notice* proposal to extend the CORES FRN requirement to NCE stations. There, commenters argued that the CORES FRN requirement would be unduly burdensome and would discourage individuals from serving on the boards of NCE stations. Moreover, commenters argued that NCE station licensees would have difficulty obtaining SSNs from board members, which may include government officials. The *Seventh Diversity Further Notice* sought comment on how these concerns would be implicated if RUFRNs were available as an alternative to CORES FRNs for Form 323–E. The Commission noted that officers and directors of NCE stations are already considered to be attributable interest holders in NCE stations and are already required to be reported on Form 323–E and sought comment on whether NCE stations present unique concerns with respect to ownership reporting requirements that should be considered by the Commission. The Commission also sought alternatives to the RUFRN for the unique identification of individuals in the NCE context.

24. Finally, the *Seventh Diversity Further Notice* sought additional comment on the elimination of the SUFRN, a proposal also contained in the *Sixth Diversity Further Notice.* The Commission noted that commenters previously supported the proposal to retain the availability of the SUFRN for the limited purpose of reporting an individual that is unwilling to provide his or her SSN to third parties or unwilling to obtain and provide a CORES FRN and opposed the Commission's use of its enforcement authority against individuals who failed to provide a CORES FRN. The *Seventh Diversity Further Notice* sought comment on whether the SUFRN should continue to be available to Form 323 filers (and, in the event proposed modifications are adopted, to Form 323–E filers), provided that a filer has used reasonable and good-faith efforts to obtain a CORES FRN or RUFRN from or on behalf of an individual. The Commission also asked whether the availability of the SUFRN would protect filers in the case of recalcitrant individuals and whether filers should be required to instruct individuals of the obligation to obtain and provide a CORES FRN or an RUFRN. The *Seventh Diversity Further Notice* also sought comment on the type of instruction and notification of the risk of enforcement action the Commission should provide or require if a CORES FRN or RUFRN is not reported for that individual. The *Seventh Diversity Further Notice* was published in the **Federal Register** on February 26, 2015. Comments were due on or before March 30, 2015 and reply comments were due on or before April 13, 2015.

III. Discussion

25. By the actions the Commission here, the Commission advances its commitment to improving the comprehensiveness and reliability of the ownership data collected on Forms 323 and 323–E to enable more effective analysis of ownership trends in support of policy initiatives promoting diversity in ownership of broadcast stations. Accordingly, the Commission will no longer allow filers to use SUFRNs on biennial ownership reports, except in limited cases, and instead will require that on such forms filers provide a CORES FRN or RUFRN for any reportable individual attributable interest holder. In addition, the Commission updates its reporting requirements for NCE stations to more closely parallel the requirements for commercial stations. The Commission also makes certain changes to its Form 323 and Form 323–E aimed at reducing the filing burdens on broadcasters and improving data collection. Finally, the Commission declines to adopt certain proposals detailed in comments in this proceeding as redundant, unnecessary, technically infeasible, or unsupported.

A. RUFRN Requirement

26. The Commission concludes that the RUFRN is important to the Commission's ongoing mission to improve, streamline, and modernize the way it collects and uses data. The Commission continues to believe that it must be able to uniquely identify parties reported on broadcast ownership reports for purposes of creating reliable and usable data in support of the Commission's policy initiatives promoting diverse ownership. The Commission has recognized that the TIN/SSN backed CORES FRNs offer a unique identifier and therefore play an important role in promoting the integrity of the data collected on Form 323. The Commission, however, is also sensitive to concerns that have been expressed regarding a mandate that every individual attributable interest holder of a broadcast station submit his or her SSN to the Commission for purposes of broadcast ownership reporting. The creation of the new RUFRN mechanism within CORES, allowing individuals to obtain a unique identification number without submitting a full SSN, properly balances

the concerns of individual attributable interest holders with the Commission's mandate to ensure the reliability and utility of its broadcast ownership data.

27. *Broadcast Ownership Reporting Using the RUFRN Supports the Commission's Data Gathering and Policy Making Initiatives.* The Commission has previously recognized that sections 257 of the 1996 Act, 47 U.S.C. 257, and 309(j) of the Act, 47 U.S.C. 309(j), support its efforts to gather the ownership data contained in Form 323. Section 257 directs the Commission to identify and eliminate "market entry barriers for entrepreneurs and other small businesses in the provision and ownership of telecommunications services and information services, or in the provision of parts or services to providers of telecommunications services and information services." To implement this mandate, the Commission is directed to "promote the policies and purposes of [the 1996 Act] favoring diversity of media voices, vigorous economic competition, technological advancement, and promotion of the public interest, convenience and necessity." As the Commission has previously recognized, improving the reporting of ownership data enables the Commission to carry out this mandate.

28. Similarly, pursuant to section 309(j), the Commission must award licenses in a manner that "promot[es] economic opportunity and competition and ensur[es] that new and innovative technologies are readily accessible to the American people by avoiding excessive concentration of licenses and by disseminating licenses among a wide variety of applicants, including small businesses, rural telephone companies, and businesses owned by members of minority groups and women." Congress directed the Commission to regulate in a manner that ensures that "small businesses, rural telephone companies, and businesses owned by members of minority groups and women" are represented in licensed activities. The statute further requires that the Commission "ensure that small businesses, rural telephone companies, and businesses owned by members of minority groups and women are given the opportunity to participate in the provision of spectrum-based services." As the Commission has previously determined, section 309(j) is evidence of a congressional policy in support of the grant of broadcast licenses to a wide variety of groups, including minorities and women.

29. In the *1998 Biennial Review Order,* 63 FR 70040, Dec. 18, 1998, FCC 98–281, rel. Nov. 25, 1998, the Commission concluded that, in order to fulfill its statutory mandates, it must collect race, gender, and ethnicity information from all interest holders reported on Form 323. In the *1998 Biennial Review Order,* the Commission stated that it would take up at a later date whether to apply these requirements to Form 323–E, as well. The Commission now finds that these requirements should be applied to Form 323–E, and the Commission's discussion on this matter can be found below. Collecting these data enables the Commission not only to assess the current state of minority and female ownership of broadcast stations but also to determine the success of programs that are designed to facilitate opportunities for women- and minority-owned businesses and to promote a diversity of media voices. Just as it is essential for the Commission to collect these ownership data to fulfill its mandates, it is important that these data be reliable, aggregable, and useful for studies and trend analysis by others.

30. The Commission finds that flaws in the current practices related to the reporting of SUFRNs for individuals listed on Form 323 compromise the integrity of the data collected and thereby frustrate the Commission's attempts to fulfill its statutory mandates under section 257 and section 309(j). The SUFRN was devised as merely a computer-generated number to be created by clicking a button within Form 323 itself and not backed by any identifying information. The Commission collects no information when the system generates a new SUFRN, and there is no database analogous to CORES that contains uniquely identifying information associated with SUFRNs. The SUFRN therefore offers the Commission no way to cross reference or trace back reported information to a single individual. It was intended only as an interim measure. Based on the Commission's experience reviewing the ownership reports submitted during three separate biennial reporting cycles, it is clear that SUFRNs have been used in a manner that is inconsistent with the Commission's direction and that undermines the integrity of the data. On the one hand some SUFRNs have been used in conjunction with multiple individuals, and on the other hand individuals have used multiple SUFRNs. Because the Commission currently cannot determine whether two SUFRNs identify one or more individuals, it cannot reliably examine the complete attributable holdings of an individual reported with an SUFRN (either at a specific time or over time), or search, aggregate, and cross reference the ownership data. Any attempt at such analysis would require manual analysis of every single entry where an SUFRN appears together with a subjective analysis of other textual information contained on the form or available from other public sources. The Media Bureau cannot confidently determine the number of individuals reporting SUFRNs. In the 2011 biennial ownership reports, the Bureau found that 3,326 unique SUFRNs were reported, and, because some were reported multiple times, SUFRNs were used in 8,719 instances. Because it is possible for filers to improperly report SUFRNs for individuals—either reporting multiple SUFRNs for a single individual on multiple reports or using the same SUFRN for multiple individuals on multiple reports—despite instructions to the contrary, the Bureau concluded that the number of unique SUFRNs reported during the 2011 filing period cannot be relied on to accurately determine the number of individuals using SUFRNs. Manual, subjective analysis of thousands of Form 323 entries using various sources of information compromises data integrity and data utility. Consequently, the Commission cannot rely on the SUFRNs reported to provide reliable ownership data.

31. In the *Sixth Diversity Further Notice,* 78 FR 2925, Jan. 15, 2013, FCC 12–166, rel. Jan 3, 2013, the Commission tentatively concluded that TINs/SSNs within CORES were necessary as underlying unique identifiers of individuals. Commenters to the *Sixth Diversity Further Notice* strongly objected to the proposed Commission mandate that all individual attributable interest holders submit an SSN to the Commission to obtain a traditional CORES FRN.

32. In contrast, in the *Seventh Diversity Further Notice,* 80 FR 10442, Feb. 26, 2015, FCC 15–19, rel. Feb. 12, 2015, the Commission tentatively found that a proposed alternative to the traditional CORES FRN would provide a reasonable basis for determining that an individual is uniquely identified within the CORES system. Specifically, the Commission proposed making available a new identifier, the RUFRN. Filers wishing to use this identifier would be required to submit an individual's full name, residential address, date of birth, and only the last four digits of the individual's SSN. In response to the *Seventh Diversity Further Notice,* commercial broadcasters and public interest groups support the alternative RUFRN approach. Some

commenters argue that the use of SUFRNs on Form 323 "ha[s] introduced inaccuracy and uncertainty into media ownership data," because SUFRNs are not backed by identifying information that can reliably be linked to a unique individual. While the CORES FRN system is a superior solution, RUFRNs are a sufficient means for identifying individuals and allowing longitudinal analysis of media ownership trends, they state. No commenters propose additional or different pieces of information that would better enable the Commission to ensure that individuals are uniquely identified.

33. Some commenters disagree that the RUFRN proposal is superior to the existing SUFRN system. Although these commenters focus primarily on issues related to NCE attributable interest holders, which are addressed in detail below, some of the arguments suggest that the use of RUFRNs will not substantially and meaningfully improve the quality of the Commission's broadcast ownership data generally. These commenters assert that if SUFRNs are being misused, it is either due to mistakes or conscious decisions not to comply with Bureau guidance. According to these commenters, either remains possible with the proposed RUFRN system. The Alabama Educational Television Commission (AETC) et al. argue that users could accidentally enter information incorrectly, forget to enter a previously used SUFRN or FRN, or intentionally violate the Commission's rules, and that errors could also stem from data entry problems on Form 323 itself, such as inadvertent or intentional mistyping of RUFRNs, SUFRNs, or FRNs. AETC et al. urge the Commission to retain the SUFRN for individual attributable interest holders that refuse to obtain a CORES FRN or RUFRN, without imposing substantiation requirements, and to specifically exclude "NCE and non-profit licensees" from the new RUFRN requirement. The Commission addresses these two requests below and addresses here the more general assertion. In addition, commenters state, insofar as the Commission intends to allow use of ownership data by third-party researchers, much of the benefit that comes from the use of RUFRNs is negated by the Commission's proposal to hold securely and confidentially within CORES all identifying information used to obtain RUFRNs, except for names and the RUFRNs themselves.

34. The Commission finds that its policy initiatives are dependent on the quality of the data collected. The Commission concludes that having reasonable assurance that attributable interest holders are uniquely identified on ownership reports in a manner that ensures that the data can be meaningfully searched, aggregated, and cross referenced electronically is crucial to the quality and usability of the Commission's ownership data. The Commission concludes that the SUFRN cannot provide unique identification of individual attributable interest holders on broadcast ownership reports, and the Commission concludes that requiring an FRN generated by CORES, either through existing mechanisms or via the RUFRN method, for all attributable interest holders on broadcast ownership reports is essential to improve the quality and usability of the data collected. The Commission therefore adopts the RUFRN as an alternative mechanism within CORES that will allow an individual (not entities) to obtain an RUFRN by submitting an alternate set of identifying information that does not include a full SSN: Full name, residential address, date of birth, and the last four digits of the individual's SSN.

35. The identifying information provided by the individual will be stored confidentially within CORES, as other sensitive information is stored in CORES to support CORES FRNs issued pursuant to existing functionalities. Only the individual's name and RUFRN will be available publicly. Both the RUFRN and the associated ownership information will be entirely machine readable and will not require manual consideration of each biennial ownership form to analyze whether various Form 323 entries might identify the same individual or different individuals. The same is true for the CORES FRN and underlying TIN. The CORES system will be programmed to verify that the information submitted by the applicant is complete and does not duplicate any information that is already associated with an RUFRN in CORES. The Commission concludes that, since RUFRNs will be backed by identifying information, and since CORES will not issue multiple RUFRNs for the same identifying information, RUFRNs can be relied on to identify individuals uniquely. When the applicant obtains an RUFRN, the applicant will be asked to list all CORES FRNs registered to the individual and all SUFRNs the individual previously used in any broadcast ownership report filings since the 2009 biennial reporting cycle. The Commission concludes that such disclosures will allow it to identify CORES FRNs, RUFRNs, and SUFRNs that identify the same individual, promoting the usefulness of the broadcast ownership data for purposes of electronic searching, aggregating, and cross-referencing and for trend analysis. RUFRNs may be used only on broadcast ownership reporting forms and only for individuals (not entities) reported as attributable interest holders. Once an RUFRN is issued, any ownership report filing that lists the individual associated with that RUFRN will be required to include that RUFRN. However, an individual may opt to use a traditional CORES FRN instead of obtaining and using an RUFRN. In the *Sixth Diversity Further Notice*, the Commission sought comment on the Koerner & Olender Petition for Reconsideration, which requested that the Commission either reconsider its requirement that individuals holding attributable interests obtain a CORES FRN, which in turn would require such individuals to provide the Commission with their SSN, or "redefine or reinterpret" section 1.8002 of the Commission's rules to clarify that individuals with reportable interests must obtain a CORES FRN. The Commission notes that the petition's concerns about the disclosure of individuals' full SSNs are addressed by the RUFRN system the Commission is adopting, which will allow individual attributable interest holders to obtain an RUFRN without disclosing their full SSNs to the Commission. Thus, the Commission grants the petition to the extent Koerner & Olender sought reconsideration of the requirement for individuals holding attributable interests in licensees to provide their SSN to the Commission. Further, since the Commission is not requiring such individuals to obtain a CORES FRN, which is the identifier addressed by section 1.8002, there is no need to modify section 1.8002 in connection with the adoption of the RUFRN requirement. The Commission therefore denies the Koerner & Olender Petition for Reconsideration to the extent it requests that the Commission amend section 1.8002. With this *Report and Order,* all the issues raised in the Fletcher Heald Petition for Reconsideration are resolved. The Fletcher Heald Petition for Reconsideration requested that the Commission provide additional opportunity for public comment on the CORES FRN requirement before requiring the reporting of CORES FRNs for individuals reported on Form 323 due to concerns about the disclosure of individuals' full SSNs. The Commission has issued two further notices of proposed rulemaking to consider these issues. Consistent with the discussion in

this *Report and Order,* the Commission grants the Fletcher Heald Petition for Reconsideration to the extent it seeks reconsideration of the requirement that filers provide a traditional CORES FRN, requiring the submission of a full SSN/TIN, for every individual attributable interest holder reported on Form 323. Filers are permitted to provide RUFRNs, requiring submission of an alternate set of identifying information that does not include a full SSN, in lieu of CORES FRNs for individuals reported on Form 323. In addition, the Commission will continue to allow the use of SUFRNs on Form 323 in the limited circumstances described below. To the extent that the Fletcher Heald Petition for Reconsideration seeks relief inconsistent with the actions taken in this *Report and Order,* the Commission denies the Fletcher Heald Petition for Reconsideration.

36. The Commission does not believe that the existence of possible situations or limitations some commenters identified in objecting to the RUFRN compel the Commission to abandon its conclusion that RUFRNs offer superior data quality to SUFRNs for the purpose of broadcast ownership reports. As the Commission stated in the *Seventh Diversity Further Notice,* the Commission expects that individuals and entities will comply with the Commission's rules and provide accurate information during the CORES registration process to the greatest extent possible. Moreover, the Commission finds that the specificity of the identifying information required to obtain an RUFRN and the fact that a number of pieces of information are required will be sufficient to provide the Commission with reasonable certainty that the information identifies a unique filer within the CORES system. While holding some of this information confidential does limit the ability of outside researchers to use it to ensure unique identification, that limitation does not decrease the ability of the Commission to do so, just as the confidentiality of an SSN underlying a CORES FRN does not. Further, the Commission's obligation to hold confidential the identifying information underlying the RUFRN will not limit appreciably the utility of RUFRNs to outside researchers as a unique identifier, because the RUFRN application will include a mechanism to prevent issuance of multiple RUFRNs based on the same identifying information (*i.e.,* issuance of multiple RUFRNs to the same individual). As described above, the raw Form 323 biennial ownership data is available to the public, and the Media Bureau has released reports reflecting its analysis of ownership data submitted for the 2009, 2011, and 2013 reporting rounds. Future, similar reports are contemplated reflecting additional biennial reporting periods. Based on the Commission's experience in the 2009, 2011, and 2013 reporting cycles, the Commission concludes that the RUFRN will improve the reliability and usability of the broadcast ownership report database, in furtherance of the Commission's statutory mandates. As discussed elsewhere in this *Report and Order,* the Commission's examination of ownership reports from 2009, 2011, and 2013 revealed numerous data reporting errors, and the Commission has no reason to believe that all of these errors were the result of filers attempting to deliberately mislead the Commission. The presence of a unique identifier improves the quality of the Commission's ownership data by permitting errors to be identified and remedied. For example, the presence of the same individual's RUFRN on multiple reports, along with inconsistent gender and/or race information, may indicate one or more reporting errors that can then be cured. In light of the foregoing, the Commission rejects commenters' arguments that the use of RUFRNs to identify individuals is inconsequential for the purpose of tracking ownership trends.

37. *RUFRNs Are Not Burdensome, and the Benefits Outweigh the Costs.* The Commission concludes that its decision to allow individual attributable interest holders the option of obtaining and using an RUFRN in lieu of a traditional CORES FRN will impose minimal costs and burdens, if any, on individuals or filers. As noted above, individuals who already have a CORES FRN will be able to continue using their existing number without having to register for an RUFRN, and any other reportable individual that wishes to obtain a CORES FRN instead of an RUFRN will still be able to do so. Like registering for a CORES FRN, registering for an RUFRN will be a one-time process that takes a few moments to complete. An individual need only fill out a short online form requiring just a few pieces of information: A name, address, birth date, and the last four digits of the SSN. The applicant also provides a password and a personal security question (to help in case the applicant later misplaces or forgets his or her password). There are at most *de minimis* costs or burdens associated with obtaining the number. An individual does not need to provide personal information to anyone other than the Commission to obtain a CORES FRN or RUFRN. That information can be provided to the Commission alone, and then the CORES FRN or RUFRN can be provided to a licensee for reporting purposes. In addition, the RUFRN will serve as a unique identifier that can be cross referenced easily, which will enable the Commission to make certain modifications to broadcast ownership reporting that will reduce the burdens on all filers, as described below, and therefore further improve the quality of the ownership data submitted to the Commission. The Commission concludes that these benefits outweigh the *de minimis* costs or burdens associated with obtaining an RUFRN. Although some commenters argue that implementing the RUFRN would impose specific burdens on NCE licensees, as discussed below, no commercial entity disputes the Commission's finding that RUFRNs will not be burdensome for commercial entities or individuals holding attributable interests in them. AETC et al. argue that the RUFRN requirement will be overly burdensome, particularly for "NCE and non-profit licensees." Below, the Commission addresses burden-related arguments specific to NCE stations.

38. *Security of Commission Systems.* In the *Sixth Diversity Further Notice,* 78 FR 2925, Jan. 15, 2013, FCC 12–166, rel. Jan 3, 2013, the Commission sought comment on any security concerns related to the requirement that a TIN/SSN for every attributable interest holder be provided to the Commission. The Commission noted that while TIN/SSN data is collected during the CORES FRN registration process, TINs/SSNs are not disclosed on any Commission application or form, including Forms 323 and 323–E. Commenters raised concerns that a CORES FRN requirement for individuals will open individuals to threats of identity theft. Some commenters pointed to a system breach described in a GAO report on information security (Information Security GAO Report), GAO–13–155, Jan. 2013, and suggested that the Commission's systems are vulnerable to a security breach. In the *Seventh Diversity Further Notice,* 80 FR 10442, Feb. 26, 2015, FCC 15–19, rel. Feb. 12, 2015, the Commission described the safeguards in place on the Commission's systems and improvements that have been implemented to assure the security of the Commission's systems, including that of CORES. The Commission reiterated that security continues to be

one of the Commission's highest priorities, and sought comment on whether the elimination of the requirement of individual attributable interest holders to submit a full SSN to CORES eliminates the privacy and identity theft concerns that have been previously raised. The Commission also asked for guidance on how to address any remaining concerns that are not alleviated, and whether those concerns outweigh the importance of the data collection.

39. In response, NAB states that RUFRNs, because they create a unique identifier without requiring individuals to submit full SSNs to the Commission, provide a "safety valve" for individuals who might be reluctant to obtain a CORES FRN due to data privacy and security concerns. NAB claims this is accomplished without compromising the quality of the Commission's ownership data. Thus, states NAB, the RUFRN proposal for commercial broadcasters reflects a better balancing of affected interests than simply eliminating the SUFRN and mandating CORES FRNs in all cases.

40. NCE commenters, on the other hand, continue to express concerns about identity theft, even though the RUFRN does not require the disclosure of full SSNs. NCE commenters state that the existence of an individual's name, address, date of birth, and the last four digits of an SSN would permit hackers to predict a full SSN. Some commenters cite a study conducted by researchers at Carnegie Mellon University. In that study, researchers were able 44 percent of the time to predict the first five digits of individual SSNs for persons born after 1989.[6] In addition, some commenters note that higher education institutions have recognized the need to protect the confidentiality of individuals' birth dates and the last four digits of their SSNs. As an example, these commenters cite the California State University System's Information Security Data Classification standards, which mandate the highest level of information security for an individual's birth date combined with the last four digits of the SSN and state that unauthorized disclosure of that information could result in "severe damage to CSU, its students, employees or customers." Even if an individual's full SSN is not reconstructed, assert AETC et al., a successful hacker could still gain access to countless private accounts held by those interest holders because many financial institutions, utility accounts, and other businesses use the last four digits of the SSN to restore a lost password or access an account, frequently in combination with other information the Commission proposes to require for an RUFRN. NCE commenters also raise concerns regarding the potential disclosure of individuals' residential addresses, stating that NCE board members are often public officials or other prominent individuals who wish to keep this information private for the safety of themselves and their families. In the *Seventh Diversity Further Notice,* the Commission proposed that, for the RUFRN, the individual's name and RUFRN could be available publicly but the remaining identifying information would be held securely and confidentially within CORES. As stated there, the Commission has taken steps and put in place procedures to assure the security of the Commission's systems. Moreover, the Commission continues to strengthen the security of its systems, as discussed below.

41. Even if the Commission's systems have not been breached to date, NCE commenters argue, there is no assurance that a successful breach will not occur in the future. They again point to the Information Security GAO Report and cite to reports of recent breaches at the White House and other Federal offices. Some commenters claim that the risk of breach would increase if the Commission begins storing in CORES information about NCE board members because some are public officials or other prominent individuals. Although it is sometimes necessary to collect personal information that can be used for identity theft, AETC et al. assert, to provide maximum protection, the collection of such information must be limited to situations where there is no alternative.

42. As stated in the *Seventh Diversity Further Notice,* the Commission agrees with commenters that privacy and security with respect to personally identifiable information are paramount, and the Commission remains committed to protecting such interests. The Commission notes that its systems currently safely house a significant amount of information that is the same, similar, or—in the case of full SSNs—even more sensitive than the information underlying the RUFRN. Despite commenters' repeated citation to the Information Security GAO Report, as the Commission has stated before, the Commission is not aware of any breaches to CORES. As the Commission has previously stated, the Commission was in the process of implementing certain improvements before the completion of the Information Security GAO Report, and the Commission continues to strengthen its security environment using the recommendations contained in the Report. The Information Security GAO Report did not identify any security deficiencies in CORES. For the Commission's statement regarding its response to the security breach and the deployment of the Enhanced Secured Network Project, see pages 26 through 29 of the Information Security GAO Report. The enhanced perimeter controls, malware protection, and monitoring devices continue to be in place, and the workstation operating systems are routinely upgraded with improved security. The Commission's systems and security architecture continue to contain robust strict operational controls that comply with National Institute of Standards and Technology guidance. The Commission's system servers remain behind several firewalls, and security controls continue to be upgraded to protect CORES data from intrusion by outsiders and the general Commission population. Furthermore, the Commission has recently moved to a Managed Trusted Internet Protocol Service (MTIPS) provider that will move the Commission from being Internet Protocol Version 4 to Internet Protocol Version 6 going forward. Again, administrative access to CORES remains limited and all servers continue to be monitored through the use of automated tools and operational procedures. The Commission will continue to make the necessary upgrades to ensure the security of CORES and all of its systems, and protecting the personally identifiable information contained in its system will remain one of the Commission's highest priorities.

43. No commercial entity has contested the Commission's proposal to implement the RUFRN system for individual attributable interest holders in commercial broadcast stations, and NCE commenters have offered no compelling reason why the Commission must conclude that the system security needs or risks of NCE attributable interest holders are greater than those of commercial attributable interest holders. Indeed, the quality of the information is similar or exactly the same. The observation that NCE attributable interest holders may be public officials or other prominent individuals is also true in the commercial realm. The Commission takes its data security obligations to all entities and individuals that have confidential

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[6] *See* American Association for the Advancement of Science, *Social Security Numbers are Easy to Guess,* Science News, from the journal Science (July 6, 2009), ***http://news.sciensemag.org/2009/07/social-security-numbers-are-easy-guess.***

information housed within the Commission's systems extremely seriously. Commenters also concede that it is sometimes necessary to collect personally identifiable information when no alternative method exists. Indeed, this is such a situation. As noted above, to fulfill its statutory mandate to promote diversity of media voices and avoid excessive concentration of licenses by disseminating them to, among others, businesses owned by members of minority groups, the Commission must have reliable, comprehensive data reflecting the attributable interest holders in broadcast stations. The Commission has repeatedly requested comment on alternatives that would balance the Commission's need to uniquely identify individual attributable interest holders on the biennial ownership reports with privacy needs. No commenter in this proceeding has offered an alternative to the CORES FRN or RUFRN and the Commission has concluded that the SUFRN is not a suitable alternative. The Commission believes that that the RUFRN as an alternative to a traditional CORES FRN is a reasonable approach that balances the Commission's need to uniquely identify reportable individuals with the security and privacy concerns raised by the commenters. No commenters assert that the Privacy Act would bar the adoption of the RUFRN requirement for the reporting of attributable interest holders on ownership reports for either commercial stations or NCEs. The Commission finds that the RUFRN requirement described herein is consistent with the Privacy Act for Form 323 and Form 323–E. The Commission directs the Media Bureau to prepare the necessary documents to comply with the Privacy Act.

B. Improvements to Data Collection From NCE Stations

44. To enhance the completeness of the Commission's data collection, promote data integrity, and ensure that data are electronically readable and aggregable, the Commission revises Form 323–E for NCE stations to collect race, gender, and ethnicity information for attributable interest holders, require that CORES FRNs or RUFRNs be used, and conform the biennial filing deadline for NCE broadcast ownership reports with the biennial filing deadline for commercial station ownership reports. In limited circumstances there may be additional parties—other than officers or directors—that hold attributable interests in an NCE station. For example, some states allow non-profit organizations to issue voting stock or the equivalent thereto. Holders of five percent or more of the voting stock of such entities are attributable owners pursuant to section 73.3555, Note 2(a), and must be reported on Form 323–E in the same manner as officers and directors (including the provision of a CORES FRN and, in the case of individuals, race, gender, and ethnicity information). As noted below, the Commission's revisions to Form 323–E and its instructions confirm this point. Attached to this *Report and Order* is a draft of the revised version of Form 323–E that will be submitted for OMB approval. The draft revised version of Form 323–E that is attached to this *Report and Order* at Appendix E resembles in several ways the draft revised version of Form 323 that is attached to this *Report and Order* at Appendix D and, where applicable, includes counterparts to the modifications to Form 323 discussed herein. Section and question references in this *Report and Order* refer to the current version of the form, which is implemented in the Commission's Consolidated Database System (CDBS). Because the revised version of the form will be implemented in the Commission's Licensing and Management System (LMS), it will be given a new number, and its format, structure, and question identification will differ from the CDBS version of the form. When discussing issues concerning Form 323–E, some commenters suggested that the Commission make changes to forms other than its broadcast ownership reports. The Commission declines to do so at this time, as these proposals are outside the scope of this proceeding.

45. *Including NCE Stations Improves Data Completeness.* As noted above, the Commission has previously determined that it has authority under section 257 and section 309(j) to collect ownership information from commercial broadcast stations. The Commission finds that its analysis with regard to the collection of data from commercial stations is equally applicable in the NCE context. NCE stations hold Commission licenses, as do commercial licensees. Their programming impacts local communities. Nothing in the statute distinguishes the noncommercial nature of any segment of a service as exempting it from the overall statutory mandates. Accordingly, the Commission finds that it has authority to collect race, gender, and ethnicity information from attributable interest holders in NCE stations, and the Commission affirms the conclusion in the *Fourth Diversity Further Notice* that doing so will further the Commission's goal of designing policies to advance diversity. Further, the adoption of the CORES FRN requirement in the context of Form 323–E is supported by the Commission's statutory mandates under section 257 of the 1996 Act and section 309(j) of the Act.

46. The Commission has previously found that, in order to adopt policies or regulations to promote minority and female ownership of broadcast stations, it is imperative to have information about female and minority ownership in broadcasting as a whole—specifically including "the entire universe of NCE stations." In light of this, commenters who assert that there is no policy justification for the Commission to collect ownership data from NCE stations are incorrect. Similarly, the Commission disagrees with commenters who suggest that collection of ownership data from NCE licensees is unnecessary because, pursuant to section 73.3555(f) of the Commission's rules, NCE stations are not subject to the Commission's multiple ownership restrictions. The GAO and outside researchers have criticized the Commission specifically for its failure to collect data concerning ownership of NCE stations, and many have described prior data collections as incomplete.

47. The *Fourth Diversity Further Notice,* 74 FR 25205, May 27, 2009, FCC 09–33, rel. May 5, 2009, sought comment on the proper definition of "ownership" in the NCE context, asking whether looking at the composition of the board of directors or other governing body of an NCE station would be appropriate for determining "ownership" for Form 323–E purposes. Several commenters support this approach, noting, for example, that board members have legally cognizable duties to the station licensees, often are involved in station operations and hiring decisions, have final authority over NCE licensees, and are responsible to the local communities they serve. Other commenters argue that dissimilarities between the governance of commercial and NCE stations precludes any definition of "ownership" in the NCE context. These parties note that board members do not have equity stakes in the stations they serve; are often governmental officials, governmental appointees, individuals elected by station members, or volunteers; and often are not involved in day-to-day station operations. Commenters also made similar arguments as they related to the proposals raised in the *Sixth and Seventh Diversity Further Notices.*

48. Officers and directors of NCE stations already are defined as attributable interest holders in NCE stations and they already are reported on Form 323–E. The Commission finds that the additional requirements it imposes here—including requiring race, gender, and ethnicity information, and a CORES FRN or RUFRN—do not involve crafting or imposing a new legal definition of "ownership" with respect to NCE stations. For Form 323 and Form 323–E purposes, the concept of ownership relies on the attribution standards set forth in section 73.3555 of the Commission's rules, which generally do not depend on equity interests but instead "seek to identify those interests . . . that confer . . . a degree of influence or control such that the holders have a realistic potential to affect the programming decisions of licensees or other core operating functions." The National Federation of Community Broadcasters and the Prometheus Radio Project ask what percentage voting interest standard is applicable to Form 323–E. Revised Form 323–E relies on the standards set forth in section 73.3555. Arguments that the Commission should not impose these additional requirements for NCE stations because the individuals have no equity ownership therefore are not compelling.

49. Individuals or entities that hold attributable ownership interests in commercial broadcast stations often do *not* hold equity interests in those stations. For example, an officer or director of a commercial broadcast licensee is an attributable owner of the licensee's station(s), regardless of whether he or she has any equity interest in the licensee. As discussed below, an officer or director may be granted an exemption from attribution only if his or her duties are wholly unrelated to the licensee. Members of partnerships and limited liability companies likewise are attributable owners, regardless of whether or not they hold an equity stake. Such parties may be insulated from attribution, regardless of equity stake, if they certify that they will not be materially involved in any way in the licensee and the relevant organizational documents provide for such insulation. It is not uncommon for limited liability companies or partnerships to assign little or no equity to the member(s) or partner(s) that hold the voting interest and assign all or most of the equity to members or limited partners that have no votes and/or are insulated pursuant to the relevant Commission criteria. Voting stock interests held in trust are attributable to the parties who can vote the stock, which usually include the trustee but may or may not include the beneficiary (the party that holds the equity). Non-voting stock cannot give rise to an attributable ownership interest, even though it has equity value, unless the Commission's EDP Rule is implicated. Moreover, while an individual's or entity's equity stake can play a role in determining attribution under the EDP Rule, the equity is not an issue in and of itself; rather, the rationale is that the individual's or entity's combined equity and debt stake, plus additional factors specified in the rule, provide the requisite ability to influence the licensee. Further, a party that is attributable under the EDP Rule may have no equity stake in the licensee whatsoever, but instead be attributable based on a significant debt-only interest (coupled with the other specified factors). Simply put, the Commission's standards for attributable ownership generally do not depend on equity positions, and many parties hold attributable interests in stations without any equity involvement in those stations. These attribution standards apply to both commercial and noncommercial stations, and the individuals and entities these standards capture have the potential to exert influence over the licensee, regardless of whether the station at issue is commercial or noncommercial. While the rule provides an example using the attribution standards to evaluate mutually exclusive NCE applications under the Commission's point system, the Commission has made clear that the section 73.3555 attribution standards apply whenever attribution issues are relevant for NCE purposes. Officers and directors therefore are attributable owners of the NCE licensees they serve. In certain limited cases, a non-profit entity holds a commercial license. Several such licensees indicate that, because they are not commercial entities, much of Form 323 contains questions that are inapplicable to their structure, and these licensees ask to use Form 323–E instead. The Commission will deem the filing of Form 323–E, in accordance with the standards set forth herein, compliant with the Commission's biennial filing obligation where a non-profit entity holds a commercial license.

50. The observation that NCE board members are often governmental officials, governmental appointees, individuals elected by station members, or volunteers does not lead the Commission to a different conclusion. The Commission's attribution standards depend not on the manner in which an individual came to be a member of a station's board of directors or other governing body, but rather on the ability to influence station programming or operations that his or her membership confers. Similarly, because a party can exert influence over a station without being involved in the day-to-day operations of that station, the Commission's attribution rules do not depend on—or even reference—such involvement. Instead, officers and directors are attributable owners because holders of such positions *have a realistic potential* to affect station programming or core operations. While the extent to which NCE officers or directors are involved in day-to-day station operations may vary, this situation is not unique to NCE stations and does not provide a basis for different treatment.

51. The Commission's rules do, however, allow officers and directors to be exempted from attribution in limited circumstances. Specifically, an officer or director can be exempted from attribution in an entity that is involved in businesses other than broadcasting, provided that his or her duties are *wholly unrelated* to the operation of the broadcast station(s) at issue. One commenter questions whether such exemptions are available in the NCE context. The Commission reiterates that its attribution standards, including the standards applicable to attribution exemptions for officers and directors, apply to both commercial and NCE stations. The Commission's revised Form 323–E, like its current and revised versions of Form 323, reflects the attribution exemption for certain officers and directors. The Commission reminds filers, however, that an attribution exemption cannot be invoked for an officer or director unless he or she does not, and will not, have the ability to influence the broadcast operations of the licensee or station(s).

52. The *Fourth Diversity Further Notice* also asked for input concerning the burden of providing race and gender information on Form 323–E. Several commenters argue that requiring the collection and reporting of such information would be unduly burdensome and might discourage board participation. Similarly, several commenters argue that requiring filers to report CORES FRNs or RUFRNs for attributable interest holders on Form 323–E would be unduly burdensome and would discourage individuals from serving on the boards of NCE stations. As explained below, the Commission also rejects these arguments. Other commenters argue that the collection of

race and gender information would be minimally burdensome and agree with the Commission's tentative conclusion that such information is necessary to construct a complete picture of minority and female participation in broadcasting. As a result of the Commission's commitment to obtaining robust and complete ownership data concerning minority and female participation in broadcasting, the Commission believes that the collection of this information about the NCE station category is necessary. The absence of such information with respect to NCE stations restricts the Commission's ability to comprehensively consider broadcasting's impact in local markets. The GAO Report specifically identified the Commission's failure to collect this race, gender, and ethnicity information from NCE stations as a key reason that the agency lacks comprehensive data on ownership of broadcast outlets by minorities and women. Moreover, the Commission is unconvinced that providing this information would be burdensome or discourage participation because many NCE stations already provide similar information in an annual report to the Corporation for Public Broadcasting (CPB). Of the approximately 4,500 NCE FM and television stations, CPB provides financial support to approximately 1,400 stations (FM and television). Stations that receive funding must submit an annual Station Activity Survey (SAS), which collects, among other data, general race/ethnicity information by gender of the stations' board members (*e.g.,* two African-American female board members and one Hispanic male board member). CPB then issues an annual report that provides an overview of diversity in the public media industry, including programming and station employment and operation, though the report does not necessarily provide a breakdown of the demographic information collected with respect to the board members of individual stations. The record does not reflect that the CPB reporting is burdensome or discourages participation, and the Commission does not believe that providing similar information to the Commission would have a significantly different impact. Stations that receive CPB support already have procedures for the collection and reporting of similar demographic information on board members of these station licensees to a third party. The Commission notes, however, that for various reasons, the CPB data collection cannot be used as a substitute for the data collected on Form 323–E. For example, CPB does not collect information from all NCE stations; CPB data does not contain the same level of detail necessary to provide the snapshot of ownership data to effectively study and analyze ownership trends together with Form 323 data; there is no way to incorporate CPB's data into LMS to create a searchable and aggregable database; and there is no public access to CPB's underlying data to permit analysis and study. Additionally, the other actions adopted herein should reduce the burdens on all filers. Therefore, the Commission believes that any additional burdens associated with providing race, gender, and ethnicity information are outweighed by the benefits of requiring the reporting of such information.

53. *RUFRNs are Necessary to Uniquely Identify NCE Attributable Interest Holders.* The *Sixth Diversity Further Notice,* 78 FR 2925, Jan. 15, 2013, FCC 12–166, rel. Jan 3, 2013, tentatively concluded that obtaining and reporting a CORES FRN for individuals identified on Form 323–E is not burdensome and sought comment. Similarly, in the *Seventh Diversity Further Notice,* 80 FR 10442, Feb. 26, 2015, FCC 15–19, rel. Feb. 12, 2015, the Commission proposed to permit an individual listed on Form 323–E to obtain and provide an RUFRN, in lieu of a CORES FRN, for use on broadcast ownership filings if the Commission modifies the Form 323–E requirements as described in the *Fourth Diversity Further Notice,* 74 FR 25205, May 27, 2009, FCC 09–33, rel. May 5, 2009. The Commission has reviewed the record with respect to these issues and concludes that extending the RUFRN requirement to Form 323–E is necessary to help ensure the reliability of the broadcast ownership data the Commission collects. By this *Report and Order,* the Commission will require attributable entities to obtain and report a CORES FRN on Form 323–E, as proposed in the *Sixth Diversity Further Notice.* While this *Report and Order* discusses the availability of the RUFRN to attributable individuals, it does not preclude individuals from reporting a CORES FRN or SUFRN provided it is done so in accordance with the restrictions outlined herein.

54. While some commenters support the Commission's conclusion that RUFRNs are essential to allow analysis of the data, other commenters dispute that position. For instance, AETC et al. claim that the Commission has failed to demonstrate why the proposed RUFRN requirement is necessary to track broadcast ownership. Similarly, the University of Utah and the Utah State Board of Regents et al. argue that the benefits derived from the use of RUFRNs on Form 323–E filings "would be marginal, at best." The University of Utah and the Utah State Board of Regents et al. assert that, in the noncommercial context, the Commission has not identified a diversity problem that additional reporting requirements would help to solve. Noncommercial stations are already required to implement numerous diversity initiatives in order to receive funding from CPB, and unlike commercial stations, NCEs are also subject to political pressures to promote diversity, state the University of Utah and the Utah State Board of Regents et al. Diversity is also identified as an explicit goal in the governing documents of many NCE broadcast licensees, the commenters assert. Further, the University of Utah and the Utah State Board of Regents et al. argue, even if the new reporting requirements enable the Commission to identify a diversity problem, it is unclear what remedial measures the Commission could take in the noncommercial context. Any remedial measures would presumably rely on market-based incentives to lower the economic or regulatory cost of ownership, which would be irrelevant to NCEs given that board membership is not determined by the cost of investment in broadcast properties or prospective financial gain from broadcast station ownership, state the University of Utah and the Utah State Board of Regents et al. According to the Public Broadcast Licensees, the ability to cross reference based on a unique identifier "has little or no relevance to the NCE industry," where the existence of multiple broadcast interests is "quite rare" in the case of NCE board members and directors. Similarly, Public Broadcast Licensees assert that the proposal to eliminate a filer's obligation to disclose other attributable broadcast interests of attributable parties listed in the filing has "little or no relevance" to NCE stations, because unlike commercial stations, "where individuals often have multiple commercial broadcast interests, the existence of such interests is in fact quite rare in the case of NCE board members and officers."

55. The Commission disagrees. The Commission believes a unique identifier for each individual attributable interest holder is necessary to make the NCE data aggregable, machine readable, and searchable in the same manner as commercial broadcast station information. As the GAO recognized, to

fully understand and analyze the ownership of broadcast stations, NCE stations must be included in the ownership data the Commission collects. As described above, the Commission's experience with the commercial biennial ownership reports from 2009, 2011, and 2013 revealed that use of SUFRNs is not workable to create data reliability and the record of this proceeding offers no reason to believe that use of SUFRNs in broadcast ownership reports for NCE stations would likely be any more successful. The presence of the RUFRN on the reports for noncommercial stations will allow the tracking of ownership trends over time and allow the Commission to determine with certainty the presence of multiple broadcast interests.

56. *Obtaining an RUFRN is Not Burdensome in the NCE Context.* Several commenters argue that the CORES FRN and RUFRN requirements would be unduly burdensome and would discourage people from serving on the boards of NCE stations. Parties also state that licensees may have difficulty obtaining the necessary information from board members, some of whom are appointed governmental officials. The Commission finds that the process for obtaining a CORES FRN or RUFRN is quite simple and will only need to be done once. While the Commission recognizes that the first time they file the new Form 323–E, NCE filers may require additional time and effort to coordinate with attributable interest holders, the Commission finds that the lead time between now and the 2017 filing window should be sufficient. The Commission is not persuaded that the requirement will significantly inhibit individuals from serving on the boards of NCEs. The Commission notes that the individuals at issue are already attributable interest holders in NCE stations and they are already identified as such on Form 323–E. With respect to obtaining an FRN, each attributable interest holder has the option of obtaining either a CORES FRN, requiring the submission of an SSN to the Commission, or an RUFRN, requiring the submission of other limited personal information, including only the last four digits of the SSN. The attributable individual need not share any of the personally identifying information with anyone other than the Commission; he or she may obtain the FRN number directly from the Commission and provide only the FRN to the licensee and the public. The Commission will house the personal information confidentially and securely. Under such circumstances the Commission does not believe the FRN requirement would serve as a serious disincentive to participation in NCE stations. SUFRNs will be available for use on Form 323–E in the limited circumstances described below.

C. Limited Availability of SUFRNs

57. In the *Seventh Diversity Further Notice,* 80 FR 10442, Feb. 26, 2015, FCC 15–19, rel. Feb. 12, 2015, the Commission sought comment on whether the SUFRN should continue to be available to filers of broadcast ownership reports in the event that after a filer has used reasonable and good-faith efforts, reportable individuals are unwilling to provide their identifying information or unwilling to obtain and provide a CORES FRN or RUFRN themselves. The Commission also asked whether filers should be required to take specific steps to substantiate that they have used reasonable and good-faith efforts, including informing reportable interest holders of their obligations and the risk of enforcement action if they fail to provide an RUFRN, CORES FRN, or identifying information sufficient to permit an RUFRN or CORES FRN to be obtained on their behalf. Some commenters urge the Commission to discontinue the use of interim SUFRNs entirely and to use its enforcement authority against anyone not willing to comply with the ownership reporting obligations. According to UCC et al., the Commission's use of its enforcement authority should include license revocations. In addition, UCC et al. claim that some broadcasters "simply do not file Form 323 at all, contrary to Bureau instructions," and urge the Commission to "fix this problem." Other commenters generally support the proposal to retain the SUFRN but argue that the Commission should not use its enforcement authority or require filers to substantiate their reasonable good-faith efforts to comply with the ownership reporting requirements. John Q states that the Commission should allow continued use of SUFRNs but limit each person to one SUFRN and store all SUFRNs within CORES.

58. The Commission confirms that SUFRNs will remain available for the limited purpose of protecting the position of filers in the case of interest holders that refuse to obtain an FRN or provide the licensee with the information necessary to generate an FRN for the interest holder. The Commission expects that, where an individual interest holder does not already have a CORES FRN, filers will acquire an RUFRN or CORES FRN for such individuals after obtaining the requisite identifying information, or will instruct the individual to obtain his or her own RUFRN or CORES FRN and to provide the FRN to the filer for reporting on the biennial ownership report form. As previously noted, the RUFRN method will avoid the need for individuals to disclose their full SSNs to the Commission. In order for the Commission's RUFRN system to be effective, the Commission believes it is necessary to ensure that filers are using reasonable and good-faith efforts to obtain RUFRNs from individuals with reportable interests (or from CORES on behalf of such individuals). Therefore, the Commission concludes that filers should be required to take specific steps to substantiate that they are making such efforts. The Commission finds that instructing an individual about his or her obligations and about potential enforcement action are specific steps that demonstrate "reasonable and good-faith efforts." No commenters proposed alternative steps that would show that such efforts are being made. The Commission expects that filers will inform reportable individuals of their obligations and the risk of enforcement action for failing to provide an RUFRN or CORES FRN or to permit an RUFRN or CORES FRN to be obtained on their behalf. An SUFRN may be obtained only if an individual still refuses to provide a means of reporting a valid RUFRN or CORES FRN after the filer has taken such steps. In the event that an SUFRN is used, the Commission may take enforcement action against the filer and/ or the recalcitrant individual. The commenters have offered no evidence in the record that the prospect of enforcement action for failing to comply with the RUFRN requirements adopted herein will have a chilling effect on participation in public broadcasting. Enforcement decisions will be made on a case-by-case basis based on the facts and circumstances of each unique case before the Commission. However, the filer itself will be exempt from enforcement action if the filer substantiates that it has used reasonable and good-faith efforts as described herein.

59. The Commission directs the Media Bureau to include instructions for Forms 323 and 323–E and post language on its Form 323 and 323–E Web site, informing reportable interest holders of their obligation to obtain and provide an RUFRN or CORES FRN, or to permit an RUFRN or CORES FRN to be acquired on their behalf, and to alert interest holders of the risk of enforcement action for the failure to provide an RUFRN or CORES FRN or to permit an RUFRN or CORES FRN to be

obtained. While the burden to obtain an RUFRN or CORES FRN or to permit the filer to acquire an RUFRN or CORES FRN falls to the interest holder, the Commission reminds filers of their obligation to review the biennial ownership report and affirm that, to the best of the filer's "knowledge and belief, all statements in [the ownership report] are true, correct, and complete." This language is found on the electronic version of Forms 323 and 323–E, which are available on CDBS. As stated above, the revised versions of these forms will be implemented in LMS. This includes verifying that the FRN reported for an individual is correct and that no SUFRN has been used in the absence of reasonable and good-faith efforts to obtain an RUFRN or CORES FRN, including informing a recalcitrant interest holder of the obligation and threat of enforcement action. When copying or importing data from a previously-submitted ownership report, filers must replace any SUFRNs that appeared on the prior report with RUFRNs or CORES FRNs before submitting the new report to the Commission, unless the reporting of one or more of those SUFRNs remains permissible under the narrow standard set forth in this *Report and Order.* The Commission notes that the biennial nature of the filing requirement and the existence of OMB procedural requirements prior to full implementation of these rules suggest that the 2017 filing period will be the first filing period implicated by the requirements described herein. This time frame mitigates any potential burden because filers have ample time to ensure that they have a current and correct RUFRN or CORES FRN for the individuals and entities reported on Forms 323 and 323–E. The Commission directs the Media Bureau to revise Forms 323 and 323–E, as well as the pop-up boxes within CDBS, to reflect this policy change.

D. Filing Burden Reduction and Improved Data Integrity

60. To make sound legislative, regulatory, and policy determinations, the Commission must have complete and reliable broadcast ownership data. Both GAO and the Third Circuit have highlighted the importance of comprehensive and reliable data. At the same time, the Commission is mindful of the burden ownership reporting represents for the industry. The Commission's experience with Form 323 submissions for 2009, 2011, and 2013 reveals that many filings contained errors. Such errors undermine the Commission's ability to electronically process ownership data and make it difficult for the Commission and outside analysts to evaluate the data. Accordingly, the Commission finds that certain improvements to the forms will greatly reduce the burden on filers, significantly streamline the filing process, and increase the quality and usability of the data submitted to the Commission. These changes include extending the biennial filing deadline for Forms 323 and 323–E, reducing the number of filings required, modifying the reporting of other broadcast and daily newspaper interests, and additional improvements described below. The Commission believes they will greatly reduce the burden on filers and increase the quality and usability of submitted ownership data. Section and question references in this *Report and Order* refer to the current version of the form, which is implemented in CDBS. Because the revised version of the form will be implemented in LMS, it will be given a new number, and its format, structure, and question identification differs from the CDBS version of the form. Several commenters suggest that the Commission make additional, minor modifications to its ownership report forms and their instructions that the Commission does not discuss in detail here. The Commission has incorporated certain of these changes into the revised ownership report forms to the extent the Commission found them appropriate and useful. In addition to changes to the forms and instructions, the Commission plans to implement improvements to CDBS, such as subform cloning features, auto-fill mechanisms, and data saving and validation routines, that will reduce data-entry burdens, simplify the form completion process, and prevent filers from submitting inconsistent data.

61. *Background.* The Commission already has taken multiple steps to address the quality of its broadcast ownership data, including setting uniform "as of" and filing dates for biennial Form 323 filings; expanding the biennial Form 323 filing requirement to include sole proprietors and partnerships of natural persons, as well as LPTV and Class A licensees; revising and clarifying the instructions to Form 323; modifying Form 323's electronic interface so that ownership data incorporated into the database can be electronically read, searched, aggregated, and cross referenced; building checks into Form 323 to perform verification and review functions and to prevent the filing of incomplete or inaccurate data; and simplifying completion of the form by providing menu and checkbox options, as well as pre-fill capabilities, for data entry. Actions taken in this *Report and Order* to require, except in limited circumstances, individuals with an attributable interest in a broadcast station to obtain either a CORES FRN or an RUFRN and provide that FRN on Form 323 and Form 323–E filings will further improve the quality of the Commission's data. In addition, the Commission modified Form 323 in March 2013 to allow for more precise reporting of data about the race(s) of attributable individuals. The modified version of the form eliminates the "Two or More Races" category and allows filers to select as many categories as apply. Previously, the form provided five specific racial categories, plus a sixth category entitled "Two or More Races," and allowed filers to choose only one category for each individual. While this change was made in response to a directive from OMB, it improves the Commission's ownership data by requiring parties to submit more precise race information for multi-racial individuals.

62. Despite these efforts, many ownership reports submitted to the Commission contained errors in 2009, 2011, and 2013. As discussed above, the Commission's experience reviewing those submissions revealed numerous filing mistakes that prevented accurate electronic processing of submitted reports. In preparing the *2012 323 Report* and the *2014 323 Report,* Commission staff (1) required many parties to submit corrective amendments to their biennial Form 323 filings, and (2) after reviewing submitted filings and additional information, manually moved additional stations with reporting errors to the proper ownership categories. Nevertheless, the Commission was unable to account for all filing errors. Free Press submitted various "corrections" to the categorization of stations in the *2012 323 Report.* Many of these "corrections" involved updating the information provided with the *2012 323 Report* to account for subsequent events, such as station assignments and transfers. The data collection provides a same-date snapshot of broadcast ownership every two years and information after October 1, 2011, is not intended to be included. Improving the accuracy and completeness of the data set remains a Commission priority.

63. The Commission has solicited a wide variety of input concerning potential further modifications to Form 323 and Form 323–E, including changes designed to decrease filing burdens and reduce errors in ownership filings. For

example, the *Fourth Diversity Further Notice,* 74 FR 25205, May 27, 2009, FCC 09–33, rel. May 5, 2009, asked whether modifications made in the *323 Order* with respect to Form 323 should also be applied to Form 323–E and sought input concerning additional measures to improve data quality, including improvements to the computer interface, additional data-verification measures, and steps to ensure that data can be electronically searched, aggregated, and cross referenced. In the *Review of Media Data Practices* proceeding, the Commission solicited public input to improve Form 323 and Form 323–E, including specifically seeking burden-reducing measures and methods to improve public access to ownership data. The Commission also asked for public comment concerning the data contained in the *2012 323 Report* and potential actions to improve the quality of that data. The *Sixth Diversity Further Notice,* 78 FR 2925, Jan. 15, 2013, FCC 12–166, rel. Jan. 3, 2013, solicited additional comment on specific proposed modifications to the Commission's ownership report forms as suggested in comments submitted in the *Review of Media Data Practices* proceeding.

64. The Commission has received extensive public input as a result of these requests. NAB in particular identifies burdens that complicate the ownership report filing process for both Form 323 and Form 323–E. As the Commission noted in the *2012 323 Report,* the complexity of the ownership report form was a factor that led parties to submit incomplete and/or inaccurate ownership information. The Commission therefore agrees that burdens associated with preparing and submitting biennial ownership reports have a negative impact on the quality of the Commission's ownership data and believes that reducing the amount of time and resources required to address the mechanical aspects of the ownership report preparation and filing process will allow parties to spend more time focused on the accuracy and completeness of the ownership information they submit to the Commission. The Commission believes that modifying the filing deadline, reducing the number of filings required, and modifying the reporting of other broadcast and daily newspaper interests will improve data quality while alleviating filing burdens. The Commission believes the measures discussed here reduce the number of required filings and burdens on filers and increase the data quality, integrity, and usability. The Commission declines to adopt other suggestions from commenters as follows: (1) Overhaul the ownership reporting regime to require each licensee to disclose its entire ownership structure, including the race, gender, and ethnicity of all attributable interest holders, on a single filing. The proposal lacks specificity and would not produce a data set that is comparable to data collected in 2009 and 2011. (2) Create cross-references between reports and allow parties to certify that no changes have occurred since the previous biennial filing date or submit abbreviated reports addressing only such changes, instead of filing complete reports on each biennial deadline. These changes are unnecessary, or of limited utility, because CDBS already allows users to create new ownership reports that contain the data from prior ownership filings quickly and easily. For example, while a filer cannot simply certify that there have been no changes since the last biennial report, that filer can, with little effort, use the "Validation and Resubmission of a previously filed Biennial Report (certifying no change from previous Report)" option within CDBS to copy and re-file a station's previous biennial Form 323. CDBS also permits users to copy the prior biennial report and then make edits that reflect changes. (3) Permit parties to submit filings on paper or via alternative methods; allowing filers to enter ownership information into text boxes instead of requiring filers to provide data in a manner that allows it to be written into the appropriate database fields in the CDBS ownership data tables; and allowing parties to upload exhibits instead of entering ownership information directly into the electronic form. These suggestions run counter to the Commission's intention to ensure, to the maximum extent possible, that ownership data is included in machine-readable data fields and can be electronically searched, aggregated, and cross referenced.

65. *Modification of Filing Dates.* Currently, Form 323 must be filed by November 1 of odd-numbered years and reflect ownership information that is accurate as of October 1 of that filing year. In the *Sixth Diversity Further Notice,* 78 FR 2925, Jan. 15, 2013, FCC 12–166, rel. Jan. 3, 2013, the Commission sought comment on its proposal to move the due date from November 1 to December 1, with the October 1 "as of" date to remain unchanged. NAB supports such an extension, and no commenters oppose providing filers with additional time for completing and submitting ownership reports. The Commission continues to believe that providing filers an additional 30 days will lead to more accurate reporting of ownership information without any significant delay in the collection and analysis of the data. The Commission makes that change.

66. The Commission declines to adopt proposals for different filing deadlines. While some commenters argue that a December 1 deadline is inconvenient for filers and Commission staff due to the date's proximity to the Thanksgiving holiday and other Commission filing deadlines, those commenters fail to suggest an alternative date. Further, the Commission finds that the 60-day period between the "as of" date and the filing date should provide sufficient flexibility for filers such that other deadlines or holidays do not complicate compliance. Filers can file any time from October 1 through December 1. MMTC asks that the Commission impose an annual, rather than biennial, ownership reporting obligation. At this time, the Commission believes that any marginal benefit of having an annual rather than a biennial snapshot of ownership data is outweighed by the additional burden such a requirement would place on licensees to undertake the full reporting obligation twice as often.

67. The *Fourth Diversity Further Notice,* 74 FR 25205, May 27, 2009, FCC 09–33, rel. May 5, 2009, asked whether the Commission should adopt uniform filing and "as of" dates for Form 323–E. The Commission will require NCE filers to submit Form 323–E in accordance with the same "as of" date and filing deadline applicable to commercial broadcasters (*i.e.,* their filings will be due on December 1 of odd-numbered years and the ownership information provided should be current as of October 1 of the filing year). Currently, NCE stations submit biennial Form 323–E in accordance with a set of rolling deadlines. Each NCE station's biennial deadline is keyed to the anniversary of the date on which its license renewal application is required to be filed. The information contained on each report must be current as of no more than 60 days prior to the filing of that report. At least one commenter argues that these current deadlines should remain in place. When adopting uniform filing and "as of" dates for Form 323, the Commission noted that, as a result of the prior, rolling deadlines, "new data are continually incorporated into the database as it is filed, mixing new data and old data . . . [which] has impeded the ability to perform time-related comparisons using our

database." Thus, in order to "[t]o make the data easier to work with, to address the problems created by the staggered ownership report filing deadlines currently in effect, and to facilitate studies of ownership," the Commission required all biennial Form 323 filers to submit reports by November 1, with data current as of October 1. The same reasoning applies equally to Form 323–E and convinces the Commission to require NCE stations to file according to the same schedule.

68. Some commenters suggest that, to reduce the burden on NCE broadcasters and their counsel, any uniform filing date for Form 323–E should be in the first quarter, to correspond to a date that certain NCE stations submit similar data to CPB. This suggestion would not allow the Commission to obtain the synchronized data needed to evaluate minority and female participation in broadcasting over all the services over time. Moreover, since not all NCE stations submit data to CPB, efforts by the Commission to coordinate with CPB would not fully address the filing deadline issue.

69. *Reduction in the Number of Required Filings.* The current version of Form 323 allows parent entity filers to list only one subsidiary licensee and its associated stations. As a result, parent entities with multiple licensee subsidiaries must file separate ownership reports for each of those licensees. In most cases, these reports are virtually identical to each other except for the details concerning the licensee and station(s) involved. The number of separate filings that a broadcaster must file under the current version of Form 323 depends on the characteristics of that licensee's ownership structure, including the number of licensees and parent entities and the relationships that those entities have to each other. In order to reduce the number of filings submitted to the Commission, NAB suggests that the Commission modify Form 323 to allow parents with several wholly owned licensee subsidiaries to list all of those licensees and their associated stations on a single report. In the *Sixth Diversity Further Notice,* 78 FR 2925, Jan. 15, 2013, FCC 12–166, rel. Jan. 3, 2013, the Commission solicited comment on this proposal and asked whether it should be expanded to allow parent entities to file consolidated reports for *all* of their licensee subsidiaries, regardless of whether or not those subsidiaries are wholly owned. No commenters oppose these proposals, and NAB indicates that it approved of the Commission's expanded version.

70. The Commission believes that modifying Form 323 to allow a parent entity with multiple licensee subsidiaries to file one report that covers all of those licensees will greatly reduce the burden on many filers with no negative impact on the quality of the Commission's ownership data. In some cases, an entity is both a licensee and the parent of one or more licensees. Such an entity must file two separate reports—one as a licensee and one as a parent company. The Commission therefore makes the following three changes to Form 323: (1) The Commission modifies the form to allow parent filers to list multiple subsidiary licensees and the stations associated with those licensees, (2) the Commission deletes the portion of section II–A, question 3(a) (non-biennial), and section II–B, question 3(a) (biennial), asking filers to identify the relationship that each reportable individual or entity has to the licensee, and (3) the Commission deletes section II–B, question 4 (biennial), asking each parent filer to identify the entity or entities directly below it in the licensee's ownership chain. The revised version of Form 323–E is consistent with these modifications as well. The Commission makes the second change to allow a parent entity to file a consolidated ownership report even if an individual listed in response to question 3(a) on the parent's report does not have the same direct interests in all of the parent's licensee subsidiaries. For example, an individual might hold officer positions in the parent and its radio licensee subsidiaries, but not in the parent's television licensee subsidiaries. Because the responses to question 3(a) on the report for each licensee include information concerning the relationship between each attributable party and that licensee, this modification will have no impact on the completeness of the Commission's ownership data. The third change will ensure that a parent entity can file a consolidated report in situations where it holds interests in some of its licensee subsidiaries directly and some indirectly and/or it holds its various subsidiary licensees through different intermediate entities. The Commission added section II–B, question 4 (biennial), to the revised version of Form 323 in an effort to improve the ability of researchers and others to cross reference ownership report data and construct complete ownership structures. Experience has demonstrated, however, that information provided in response to section II–A, question 3(a) (non-biennial), and section II–B, question 3(a) (biennial), is sufficient for these purposes.

71. *Improvements to Reporting of Other Broadcast and Daily Newspaper Interests.* In the *Review of Media Data Practices* proceeding, NAB requested that the Commission eliminate section II–B, question 3(c), of Form 323, which requires a filer to disclose the other attributable newspaper and broadcast interests of attributable parties listed in response to section II–B, question 3(a). The Commission's revised Form 323–E, like the current version of the form, requires disclosure of other broadcast interests, but does not require disclosure of other daily newspaper interests. NAB argues that submission of this data is particularly burdensome, requiring significant amounts of data entry and file uploading via a series of subforms or spreadsheet attachment(s). The Commission sought comment on NAB's proposal in the *Sixth Diversity Further Notice,* 78 FR 2925, Jan. 15, 2013, FCC 12–166, rel. Jan. 3, 2013. NAB reiterates its support, and no commenters oppose the proposal.

72. As discussed in more detail below, the Commission declines to eliminate section II–B, question 3(c), entirely. Nevertheless, the Commission believes that modifications to the reporting requirements for other attributable broadcast and daily newspaper interests will reduce filing burdens and improve both the quality and the usability of the Commission's ownership data. Specifically, the Commission takes the following actions with respect to the reporting of other broadcast interests on Form 323: (1) The Commission deletes the broadcast interests portion section II–B, question 3(c); (2) the Commission adds simple yes/no buttons to the relevant subforms; and (3) the Commission modifies the public search capabilities of its electronic filing system to allow users to search ownership report filings by FRN and output the results as either a list of reports or a list of stations. Several commenters requested that the Commission add search capabilities of this type. Taken together, these three changes will simplify reporting and allow interested parties to determine the other broadcast interests held by reported individuals and entities, if any, in a straightforward manner.

73. Two factors make these changes possible. First, the Commission's implementation of the RUFRN requirement will make the FRN information in the Commission's ownership database more useful as a means to cross reference information across multiple filings. Second,

information concerning the other attributable broadcast interests of a party listed on one biennial ownership report is contained in one or more other biennial ownership reports (*i.e.,* report(s) filed in connection with that party's other attributable stations). As a result of these two factors, parties that use the additional FRN-based search capabilities the Commission adds to its electronic filing system, as well as parties that download the Commission's ownership data and work with it directly, can create lists of broadcast interests associated with particular entities and individuals easily and reliably, rendering the XML spreadsheets previously required for the broadcast portion of question 3(c) unnecessary.

74. Section II–B, question 3(c), in the biennial section of Form 323 also requires the respondent to provide information concerning the attributable daily newspaper interests held by parties that hold attributable interests in the respondent. The Commission will not delete this portion of the question. Unlike information about broadcast interests, information concerning daily newspaper interests does not appear anywhere on Form 323 except in responses to question 3(c). In other words, an interest holder's daily newspaper interests cannot be ascertained except in direct response to this question. The Commission therefore cannot remove the newspaper interests portion of section II–B, question 3(c), without sacrificing the quality and completeness of the Commission's data. The Commission notes that, because reported newspaper interests generally are significantly fewer than the broadcast interests implicated in the first part of the question, eliminating the daily newspaper inquiry would be of limited value in reducing filing burdens. Moreover, the Commission believes that a slight modification to this question will improve the quality of the Commission's Form 323 data collection and enhance the ability of parties to search, aggregate, and cross reference the Commission's broadcast ownership data. Specifically, the Commission modifies the relevant subforms and attachments to require filers to provide an FRN for each person and entity listed. Any FRN reported in response to question 3(c) is already required in response to question 3(a). Accordingly, this modification to question 3(c) does not mandate the submission of any additional information or require any person or entity to obtain an RUFRN or CORES FRN that is not already required to do so.

75. Finally, the reasoning in support of the modifications to the reporting of broadcast interests discussed above applies equally well to both the biennial and the non-biennial sections of Form 323, as well as to Form 323–E. Accordingly, the Commission applies these changes to both sections of Form 323, and includes parallel modifications to both sections of the revised version of Form 323–E. Moreover, the Commission applies its modifications to the reporting of newspaper interests to both the biennial and non-biennial sections of Form 323, because they share a common underlying rationale. The Commission believes these changes will further reduce filing burdens and improve the quality of its ownership data. As part of making these modifications, the Commission will eliminate the relevant inconsistencies between the forms and the instructions noted by NAB in the *Review of Media Bureau Data Practices* proceeding.

76. *Addition of Tribal Nation/Entity Designation.* In the *Review of Media Bureau Data Practices* proceeding, the Bureau asked, among other things, whether it should collect additional data and for what purpose(s) and how the Bureau's data collections could be improved. In addition, the *Fourth Diversity Further Notice* sought comment concerning what data would meaningfully expand the Commission's understanding of minority and female ownership, including information to determine if NCE stations are serving underserved audiences. In response to the *Fourth Diversity Further Notice,* 74 FR 25205, May 27, 2009, FCC 09–33, rel. May 5, 2009, two commenters suggest that the Commission include a designation within Form 323–E to allow parties to identify Tribal entities. No parties oppose this request.

77. The Commission agrees that collecting information on a biennial basis concerning participation of Tribal Nations and Tribal entities in broadcasting will help the Commission evaluate service to underserved and minority populations. Moreover, such data will help inform the Commission's ongoing efforts to expand broadcast opportunities for Tribal Nations and Tribal entities, as developed in the Commission's *Rural Radio* proceeding. The Tribal Priority adopted in the *Rural Radio* proceeding benefits federally recognized American Indian Tribes and Alaska Native Villages, or Tribal consortia, and entities majority owned or controlled by such Tribes, proposing service to Tribal lands (or the equivalent thereto). Because these efforts involve both commercial and noncommercial broadcasting, and in light of the Commission's ongoing efforts to improve its broadcast ownership data collections, the Commission believes that the rationale for adding a Tribal Nation/entity designation to Form 323–E applies equally to Form 323. In addition, collection of this information on a biennial basis will be minimally burdensome, and any increased burden is outweighed by the significant burden-reducing measures adopted elsewhere in this *Report and Order.* Accordingly, the revised versions of both Form 323 and Form 323–E allow (but do not require) filers to indicate whether or not licensees and/or attributable entities are Tribal Nations or Tribal entities. For purposes of the Tribal Priority in the *Rural Radio* proceeding, the Commission defined a Tribe as any Indian or Alaska Native Tribe, band, nation, pueblo, village or community which is acknowledged by the Federal government to constitute a government-to-government relationship with the United States and eligible for the programs and services established by the United States for Indians. The Commission uses the same definition for purposes of implementing the Commission's Tribal Nation/entity designation. The criteria used by the Commission to award a Tribal Priority in the licensing context rely on this definition, but include additional factors as well.

78. *Improved Data Practices.* As noted above, the Commission noticed its intent to improve the Form 323 and 323–E data collections and sought comment on improvements and burden-reducing measures in the *Review of Media Data Practices* proceeding. The Commission also asked for public comment concerning the data contained in the *2012 323 Report* and potential actions to improve the quality of that data. In furtherance of these ongoing efforts to improve data quality, reduce filing burdens, and improve public access to ownership data, the Commission makes minor changes to its ownership report forms. These include: (1) Clarifying reporting of 47 CFR 73.3613 documents on Form 323 and Form 323–E, (2) adding a category to Form 323 for Limited Liability Companies, (3) eliminating the capitalization question from Form 323, and (4) adding a designation to Form 323 for jointly held interests. The Commission also makes modifications to the instructions for the form(s) consistent with these changes. The Commission did not receive positive or negative comments concerning the changes described below, except as indicated.

79. First, the Commission reduces burdens and improves both the quality and usability of the Commission's ownership data by clarifying the manner in which filers should report contracts and other instruments that must be filed pursuant to section 73.3613 of the Commission's rules. As part of this clarification, the Commission will eliminate the relevant inconsistencies between the forms and the instructions noted by NAB in the *Review of Media Bureau Data Practices* proceeding. Form 323, section II–A, question 1 (non-biennial), and section II–B, question 1 (biennial), requires commercial full-power television stations, AM radio stations, and FM radio stations to list all 73.3613 documents. The relevant requirement applies to full-power television stations, AM radio stations, and FM radio stations. The requirement does not apply to Class A television or LPTV stations. Accordingly, licensee entities that only hold licenses for Class A television and/or LPTV stations should answer "N/A" to this question. The Commission updates Forms 323 and 323–E and the instructions for both forms to make this clear. Form 323–E, section II, question 5, imposes the same obligation on NCE filers. The respondent on a given report may or may not be a party to these contracts and instruments. For example, certain credit agreements may include one or more of the licensee's parent entities as parties, but not the licensee. Similarly, network affiliations often include some, but not all, of the entities in a station's ownership structure as parties. Some filers list all relevant documents on the licensee's ownership report, while other filers opt to list different documents on different reports (perhaps based on whether or not the respondent is a party to the document). The latter approach requires filers to include different, often overlapping, lists of documents on multiple reports and forces researchers and other parties to examine *all* of a station's ownership filings to construct a complete list of that station's required contracts and instruments.

80. To address these issues, the Commission modifies the relevant questions on Form 323 and Form 323–E to require all section 73.3613 documents for a station to be listed on the report for that station's licensee. Under the Commission's rules, a full-power television station, Class A television station, AM radio station, or FM radio station must have an up-to-date list of all section 73.3613 documents, or copies of all such documents, in its public file at all times. Accordingly, licensee entities are often in the best position to produce the information necessary to respond to this question. It is therefore sensible to require licensees' filings to include a complete document list. This clarification will reduce filing burdens, because filers will be able to enter all required information on the licensee report and simply check "N/A" for all parent filings. Moreover, to the extent that filers may have been providing different document lists on various reports for the same parent entity, this modification helps ensure that parent entities can file consolidated reports for all of their subsidiary licensees. This clarification also will improve public access to and use of the Commission's ownership data, because parties reviewing ownership reports will need to examine only one of a station's filings to construct a full list of that station's section 73.3613 documents. As a result of this clarification, the section 73.3613 documents question mirrors section II–B, question 5, which directs parties to provide an ownership chart (or similar information) on the licensee's ownership report and to check "N/A" on all parent filings. To further improve public review and use of the Commission's ownership data, the ownership report search results screen in LMS will indicate, for each report listed, whether that report was submitted for a licensee/permittee or a parent entity. This will help users quickly identify the filings that contain summary contracts and ownership structure information.

81. Second, the Commission improves data quality by adding a category to Form 323 for limited liability companies. Section I, question 8, of Form 323 requires the filer to identify the nature of the respondent, and currently allows the filer to choose between categories for sole proprietorships, for-profit corporations, not-for-profit corporations, general partnerships, and limited partnerships. Respondents that do not fit into one of these categories must select the "other" category and provide an explanatory exhibit. The parallel question on the revised version of Form 323–E includes different categories. Accordingly, the modification the Commission makes here applies only to Form 323. Over the years, limited liability companies have become increasingly common in the ownership structures of commercial broadcast stations. The Commission believes it is prudent to add a separate category allowing parties to identify filing entities that are limited liability companies. The "other" option will remain on the form, along with the ability to upload an exhibit, for respondents that do not fit into one of the provided categories. Adding this category will reduce burdens on limited liability company filers by eliminating the need to type an exhibit. It will also improve the Commission's data by placing more ownership information into machine-readable data fields and, thereby, improving the ability of parties to electronically search, aggregate, and cross reference the Commission's ownership data.

82. Third, the Commission reduces burdens by eliminating Form 323, section II–A, question 2 (non-biennial), and section II–B, question 2 (biennial), which requires filers to provide capitalization information for any respondent that is a licensee, permittee, or entity that has a majority interest in, or otherwise exercises *de facto* control over the licensee. Neither the current nor revised version of Form 323–E contains this question. The Commission can eliminate the question without meaningfully compromising data quality because section II–A, question 3(a) (non-biennial), and section II–B, question 3(a) (biennial), better address the Commission's need to ascertain equity ownership of, and voting rights in, the respondent than does question 2. Section II–B, question 3(a) (biennial), requires information concerning both voting and equity rights in the respondent, while section II–A, question 3(a) (non-biennial), only requires information concerning voting rights in the respondent. There are at least two reasons that the information provided in response to question 3(a) is more useful than the information provided in response to question 2. First, because question 2 only applies to entities that issue stock (*i.e.*, corporations), many filers (such as partnerships and limited liability companies) do not have to provide any information. Accordingly, there currently are large gaps in the question 2 data collected by the Commission. Question 3(a), on the other hand, applies to all filers. Second, question 2 does not solicit information concerning share equity values for the various classes of stock or the relative voting rights of different classes of voting stock. As a result, information provided in response to question 2, unlike information from question 3(a), generally is insufficient for understanding the voting or equity structures of the respondent. Moreover, eliminating the capitalization question will reduce filing burdens on corporate filers.

83. Fourth, in addition to the Commission's general desire to improve the quality of its broadcast ownership

data collections, the Commission's *2012 323 Report PN* evidenced a desire to implement practical changes to Form 323 that would reduce data errors and make the Commission's ownership data more complete and usable. In furtherance of these objectives, the Commission adds a yes/no question to the subforms identifying attributable parties to allow parties to identify jointly held voting interests.

84. In certain circumstances, two or more parties hold a voting interest in a licensee or other respondent jointly. Two parties may, for example, hold 100 percent of the voting interest in an entity together, as joint tenants (as opposed to each individual holding 50 percent of the voting interests). Similarly, agreements for partnerships or limited liability companies may provide that two or more individuals exercise voting power together, such that any of the relevant parties can fully exercise the voting interest. Because the current version of Form 323 provides no mechanism for parties to identify situations in which voting interests are jointly held, it is likely that filers report such interests in different ways, which leads to errors and inconsistencies in the Commission's data. For example, faced with a situation in which parties A and B hold a 50 percent voting interest jointly, one filer might report both as having a 50 percent interest while another filer might report A and B as holding 25 percent of the voting interests each. Neither of these options accurately captures the voting rights at issue. When preparing the *2012 323 Report*, the Commission found that its inability to identify and interpret jointly held voting interests on ownership reports rendered it impossible for Commission staff to electronically or manually process those reports. Parties reviewing non-biennial Form 323 filings will face similar difficulties. Accordingly, the Commission finds that adding a question to both the biennial and non-biennial sections of Form 323 to address this issue is a minimally burdensome way to improve the quality of the Commission's ownership data. The Commission does not believe that there are many jointly held voting interests in the NCE context. Accordingly, the Commission does not make a similar modification to Form 323–E at this time.

85. Finally, the subforms for Form 323 section II–A, question 3(a) (nonbiennial) and section II–B, question 3(a) (biennial) provide categories for filers to identify each attributable party's positional interest in the respondent. To increase the usability of the Commission's ownership data, and in light of the Commission's recent decision concerning attribution of television joint sales agreements (JSAs), the Commission will add a new positional interest category that will allow filers to identify reported parties that are attributable by virtue of a JSA or Local Marketing Agreement. One commenter proposes additional reporting requirements for parties that operate a station pursuant to a local marketing agreement (LMA). As an initial matter, the Commission notes that any party that has an attributable interest in a commercial broadcast station by virtue of an attributable LMA or JSA is already required to comply with Form 323 filing requirements for that station. This existing requirement captures any minority and female ownership interests in commercial broadcast stations that result from the operation of a station pursuant to an attributable agreement. The Commission declines to extend the reporting requirement to nonattributable operating agreements because there is no information on the current record that reflects that a data collection focused on this category of nonattributable interest holders would meaningfully improve the data set.

E. Other Proposals

86. Commenters in this proceeding provide several additional suggestions relating to Form 323, Form 323–E, procedures related to those forms, and the Commission's Consolidated Database System (CDBS) that the Commission declines to implement at this time. The Commission discusses those proposals briefly below. As noted above, the Commission intends to move Forms 323 and 323–E from CDBS to LMS. Comments and arguments presented herein with respect to CDBS are equally applicable to the Commission's future LMS implementation of the forms and the associated public search capabilities. Additional rejected proposals are addressed elsewhere in this *Report and Order* and that discussion is not repeated in this section.

87. MMTC asks the Commission to create a separate filing category for transfers to bankruptcy trustees, debtors-in-possession, or trusts, arguing that this would help identify business failures. The Commission declines to do so, because the suggestion is outside the scope of this proceeding, would be burdensome and costly, and similar information is available already. Creating a new filing category would require changes to Form 323 and Form 323–E, the associated database elements in CDBS, and also changes to the Commission's forms for assignments and transfers of broadcast authorizations, the database infrastructure associated with those forms, and the Public Access portion of CDBS. The record does not demonstrate sufficient utility of the information to justify these costly undertakings. In any event, parties can use the public access portion of CDBS to obtain information concerning individual transactions, including those that involve assignments or transfers to bankruptcy trustees, debtors-in-possession, or trusts. The Public Access portion of CDBS allows users to search for assignment and transfer applications based on multiple criteria, including call sign, Facility ID Number, service, station location (city and state), application file number, and applications status. This electronic system also gives users access to the full content of each assignment and transfer application, including the portions that describe the parties to the application and the nature of the underlying transaction(s), and provides information about legal actions pertaining to those applications. The Commission intends to implement these functions in LMS as well.

88. Several commenters ask the Commission to modify its electronic filing systems, the Public Access portion of CDBS, or the online instructions for CDBS. For example, parties ask the Commission to create new filing systems for parties with limited broadband access and/or update CDBS accounts to recognize the type of entity, list only reports applicable to that entity, indicate previous filings and dates, allow users to pre-populate entries in new reports based on prior reports (including forms of different types), and provide automated filing reminders. Several of these capabilities already exist in CDBS. For example, if a party uses the same CDBS account for all of its filings, that account already contains the station's prior filings as well as information about those filings, including submission dates. CDBS in many cases allows users to pre-populate new ownership reports by copying or prefilling data from another filing of the same type. CDBS pre-populates data in some other situations as well. For example, when a party launches a covering license application in CDBS, the system often pre-populates some information from the related permit application. Similarly, CDBS uses information in the Account Maintenance menu to prefill respondent, applicant, and contact representative information into applications. The Commission intends to implement similar functions in LMS

as well. To utilize these and other burden-reducing capabilities in CDBS, filers sometimes use different CDBS accounts for different types of filings and different entities. The Commission does not want filers to lose the ability to benefit from that practice. The remaining suggestions are either technically infeasible or impose significant costs on the Commission that appear to exceed any possible benefits at this time. Other commenters suggest various enhancements to search capabilities within the Public Access portion of CDBS, including searching ownership reports by gender, race, ethnicity, voting percentage, and equity percentage; displaying explanatory messages when searches produce no results; and alerting searchers about assignment and/or transfer applications. Broadband Institute of California also requests that the Commission allow users to search ownership reports by station call sign. The Public Access portion of CDBS already provides the ability to do so. It should be noted, however, that because station Facility ID Numbers, unlike station call signs, are permanent, Facility ID Number searches provide more reliable results than call sign searches. Researchers and other parties currently can download the data files from the Commission's Web site at any time and study, search, and manipulate the data in a wide variety of ways. This suggests that developing an extensive catalog of complex query options within the public search functionality of the Commission's electronic filing system would impose unnecessary costs on the Commission. UCC et al. argue that the form in which the Commission makes its broadcast ownership data available to the public renders the data incapable of being searched, aggregated, and cross referenced electronically. This is incorrect. The Commission has ensured that the data submitted on Form 323 are incorporated into a relational database, the most common database format, which is standard for large, complicated, interrelated datasets. It is available to the public. Complete raw data from the Commission's broadcast ownership filings, both current and historical, are available for download via a Web page on the Commission's Web site, and it is updated on a daily basis to account for new and amended filings. Users can access and manipulate the data in almost limitless ways. The Commission has also made explanatory documents publicly available and easy to find. These steps represent extensive progress towards the goal of making ownership data available to the public in a form that is capable of being electronically searched, aggregated, and cross referenced.

89. Finally, several commenters ask that the Commission not audit ownership data submitted by NCE stations and/or that NCE entities be subject to reduced compliance standards and/or forfeitures. The Commission believes that in order to maintain and improve the quality of both its commercial and noncommercial ownership data, the Commission must have the ability to audit broadcast ownership data and hold parties responsible for their submissions. Accordingly, the Commission declines to make any changes to its approach to ownership report data audits and related forfeitures at this time.

IV. Procedural Matters

A. Final Regulatory Flexibility Analysis

90. As required by the Regulatory Flexibility Act of 1980, as amended (RFA), the Commission incorporated an Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on a substantial number of small entities by the policies and rules proposed in the *Fourth Diversity Further Notice of Proposed Rulemaking* (*Fourth Diversity Further Notice*), the *Sixth Diversity Further Notice of Proposed Rulemaking* (*Sixth Diversity Further Notice*), and the *Seventh Diversity Further Notice of Proposed Rulemaking* (*Seventh Diversity Further Notice*). No comments were filed addressing the IRFA regarding the issues raised in these further notices of proposed rulemaking. Because the Commission amended the rules in the *Report and Order, Second Report and Order, and Order on Reconsideration* (*Report and Order*), the Commission has included this Final Regulatory Flexibility Analysis (FRFA). This present FRFA conforms to the RFA.

1. Need for, and Objectives of, the *Report and Order*

91. The *Report and Order* enhances the collection of data reported on FCC Form 323, Ownership Report for Commercial Broadcast Stations, and FCC Form 323–E, Ownership Report for Noncommercial Broadcast Stations, to improve the data available to analyze issues relevant to ownership and viewpoint diversity. These improvements are designed to advance the Commission's long-standing goal of promoting diversity in ownership of broadcast stations to ensure that diverse viewpoints and perspectives are available to the American people in the content they receive over the broadcast airwaves. In pursuit of this goal, the Commission has a long history of promulgating rules and regulations intended to foster diversity in terms of minority and female ownership. A necessary precursor to the Commission's rulemaking efforts is the collection of comprehensive, reliable data reflecting the race, gender, and ethnicity of the owners and other interest holders in broadcast stations. Such data are essential to effectively study and analyze ownership trends, to assess the impact of Commission rules, and to provide the foundation for the consideration of new rules, among other things. To be useful for this purpose, to the greatest extent possible the data must be capable of being read, verified, searched, aggregated, and cross-referenced electronically.

92. Accordingly, pursuant to the Commission's statutory mandate contained in section 257 of the Telecommunications Act of 1996 (the 1996 Act) and section 309(j) of the Communications Act of 1934 (the Act) to *promote* opportunities for small businesses and women and minorities in the broadcasting industry, the Commission implements a Restricted Use FRN (RUFRN) within the Commission's Registration System (CORES) that individuals may use solely for the purpose of broadcast ownership report filings. The Commission believes that the RUFRN will allow for sufficient unique identification of individuals listed on broadcast ownership reports without necessitating the disclosure to the Commission of individuals' full Social Security Numbers (SSNs). In light of the adoption of the RUFRN requirement, the Commission eliminates the availability of the Special Use FRN (SUFRN) for broadcast station ownership reports, except in very limited circumstances as further described herein. The Commission also prescribes revisions to Form 323–E that conform reporting for noncommercial broadcast stations more closely to those for commercial stations, including information about race, gender, and ethnicity of existing attributable interest holders; the use of a unique identifier; and the biennial filing requirement. Finally, the Commission makes a number of significant changes to the reporting requirements that reduce the filing burdens on broadcasters, streamline the process, and improve data quality. These changes include extending the biennial filing deadline, reducing the number of filings required, improving the reporting of other

broadcast and newspaper interests, and other modifications.

2. Summary of Significant Issues Raised by Public Comments in Response to the IRFA

93. The Commission received no comments in direct response to the IRFAs contained in the *Fourth Diversity Further Notice*, the *Sixth Diversity Further Notice*, and the *Seventh Diversity Further Notice* in this docket. However, as further discussed below, the Commission received comments that discuss the additional burdens on broadcast licensees, including small entities. For reasons discussed below, some commenters oppose the adoption of the RUFRN requirement, the elimination of the availability of the SUFRN, and the expansion of the race, gender, and ethnicity reporting for Form 323–E.

94. The actions taken in the *Report and Order* advance the Commission's commitment to improving the comprehensiveness and reliability of the ownership data collected on Forms 323 and 323–E to enable more effective analysis of ownership trends in support of policy initiatives promoting diversity in ownership of broadcast stations. As a result, the Commission will no longer allow filers to use SUFRNs on biennial ownership reports, except in limited cases, and instead will require that on such forms filers provide an RUFRN or CORES FRN for any reportable individual attributable interest holder. In addition, the Commission updates its reporting requirements for NCE stations to more closely parallel the requirements for commercial stations. The *Report and Order* also makes certain changes to the Commission's Form 323 and 323–E aimed at reducing the filing burdens on broadcasters and improving data collections. Finally, the Commission declines to adopt certain proposals detailed in comments in this proceeding as redundant, unnecessary, technically infeasible, or unsupported.

95. *Availability of the RUFRN*. Currently, filers of Form 323 (Ownership Report for Commercial Broadcasters) must provide an FCC Registration Number (FRN) generated via CORES for each reported attributable party. *To obtain* a CORES FRN, an individual must submit his or her SSN to the Commission through CORES. CORES FRNs therefore can be used to uniquely identify individuals reported on Form 323, which is crucial to the quality and utility of the Commission's broadcast ownership data. Filers also have the option of reporting an SUFRN for individuals, if after good-faith efforts, the filer is unable to report a CORES FRN for that individual. As further discussed below, the Commission finds that the existence of SUFRNs undermines the usefulness and integrity of the Commission's broadcast ownership data, because they are not backed by identifying information that allows the Commission to uniquely identify an individual reported on the biennial ownership reports.

96. In the *Report and Order*, the Commission notes that it is sensitive to the concerns raised regarding a proposed requirement that every individual interest holder of a broadcast station submit his or her SSN to the Commission for the purpose of reporting a CORES FRN on the broadcast ownership reports. The Commission finds that the RUFRN (which does not require the submission of a full SSN but instead requires submission of full name, residential address, date of birth, and only the last four digits of the individual's SSN) will support the Commission's data gathering and policy-making initiatives by providing reasonable assurance that *individuals* reported on the broadcast ownership reports are uniquely identified in a manner that ensures that the data collected can be meaningfully searched, aggregated, and cross-referenced electronically. Moreover, the use of SUFRNs on Form 323 has compromised the integrity of the data collected and frustrated the Commission's attempts to fulfill its statutory mandates under section 257 and section 309(j). Accordingly, the *Report and Order* adopts the RUFRN for use on Form 323 by attributable individuals. An individual requesting an RUFRN would be required to submit his or her name, date of birth, and residential address, along with the last four digits of his or her SSN, to CORES.

97. The identifying information provided by the individual in order to obtain an RUFRN will be confidentially stored within CORES, and only the individual's name and RUFRN will be available publicly. The underlying information will be entirely machine readable and will not require the manual consideration of each biennial ownership form to compare associated name and address information to analyze whether Form 323 entries might identify the same individual or different individuals. When the individual applicant obtains an RUFRN, the applicant will be asked to list all CORES FRNs registered to the individual and all SUFRNs that the individual previously used in any broadcast ownership report filings since the 2009 biennial reporting cycle. The Commission concludes that this disclosure will allow the Commission to identify all CORES FRNs, RUFRNs, and SUFRNs that identify the same individual, which will promote the usefulness of the broadcast ownership data for purposes of electronic searching, aggregating and cross-referencing, and for trend analysis. Once an RUFRN is issued, an ownership report filing that lists the individual associated with that RUFRN will be required to include that RUFRN. However, an individual may opt to use a traditional CORES FRN instead of obtaining and using an RUFRN.

98. The Commission also concludes that permitting individual interest holders the ability to obtain and report an RUFRN in lieu of a traditional CORES FRN will impose minimal costs and burdens, if any, on individuals or filers. Those that already have a CORES FRN will be able to continue to use that existing number without the need to *register* for an RUFRN, and any individuals interested in obtaining a CORES FRN will still be able to do so. Registering for an RUFRN is a one-time process that takes a few moments to complete, and there are at most *de minimis* costs or burdens associated with obtaining the RUFRN. The use of the RUFRN as a unique identifier that can be easily cross-referenced will also enable the Commission to make certain modifications to broadcast ownership reporting that will reduce burdens on all filers, as described below, and will therefore further improve the quality of the ownership data submitted to the Commission. Although some commenters argue that implementing the RUFRN would impose specific burdens on NCE licensees, as discussed below, no commercial station disputes the Commission's finding that RUFRNs will not be burdensome for commercial entities.

99. Commenters also raise concerns about the security and integrity of CORES and argue that registering for a CORES FRN or an RUFRN may leave individuals vulnerable to identity theft. The Commission agreed with commenters that privacy and security with respect to personally identifiable information are paramount, and the Commission stated that it is confident that the steps taken and the procedures in place assure the security of the Commission's systems. In fact, the Commission stated that it is not aware of any breaches to CORES. In the *Seventh Diversity Further Notice*, the Commission explained that it was in the process of implementing certain improvements before the completion of the Information Security GAO Report, and the Commission continues today to

strengthen its security environment using the recommendations included in the Report. The CORES architecture exceeds Federal guidelines, and the Commission's databases are behind several firewalls. Administrative access to the CORES application is limited and all transmission of non-public data is encrypted. Moreover, the Commission has made numerous upgrades to its network, including implementing enhanced perimeter controls, malware protection, and monitoring devices, and upgrading workstations to operating systems with improved security. As a result, the Commission's network is stronger, better, and more secure than ever before. Security will continue to be one of the Commission's highest priorities, and the Commission will continue to make the necessary upgrades to ensure the security of CORES and all of its systems. In response to the *Seventh Diversity Further Notice,* the National Association of Broadcasters also commented that RUFRNs, because they create a unique identifier without requiring individuals to submit full SSNs to the Commission, provide a 'safety valve' for individuals who might be reluctant to obtain a CORES FRN due to data privacy concerns.

100. *Modifications to Form 323–E.* To enhance the completeness of the Commission's data collection, promote data integrity, and ensure that data are electronically readable and aggregable, the Commission also revises Form 323–E for NCE stations to collect race, gender, and ethnicity information for attributable interest holders, require that CORES FRNs or RUFRNs be used, and conform the biennial filing deadline of broadcast ownership *reports* for NCEs with commercial stations. The Commission finds that it has authority under section 257 of the 1996 Act and section 309(j) of the Act to collect race, gender, and ethnicity information from attributable interest holders in NCE stations, and the Commission affirms the conclusion in the *Fourth Diversity Further Notice* that doing so will further the goal of designing policies to advance diversity.

101. The *Fourth Diversity Further Notice* sought comment on the proper definition of "ownership" in the NCE context, asking whether looking at the composition of the board of directors or other governing body of an NCE station would be appropriate for determining "ownership" for Form 323–E purposes. Several commenters support this approach, noting, for example, that board members have legally cognizable duties to the station *licensees,* often are involved in station operations and hiring decisions, have final authority over NCE licensees, and are responsible to the local communities they serve. Other commenters argue that dissimilarities between the governance of commercial and NCE stations precludes any definition of "ownership" in the NCE context. These parties note that board members do not have equity stakes in the stations they serve; are often governmental officials, governmental appointees, individuals elected by station members, or volunteers; and often are not involved in day-to-day station operations.

102. The Commission finds that officers and directors of NCE stations already are defined as attributable interest holders in NCE stations and that such individuals are already identified on Form 323–E. The additional requirements imposed in the *Report and Order* do not involve crafting or imposing a new legal definition of '*ownership*' with respect to NCE stations. For purposes of Form 323 and 323–E, the concept of ownership relies on the attribution standards set forth in section 73.3555 of the Commission's rules. The *Report and Order* notes the instances in which individuals or entities may hold attributable ownership interests in commercial broadcast stations without holding equity interests in those stations. For example, an officer or director of a commercial broadcast licensee is an attributable owner of the licensee's station(s), regardless of whether he or she has any equity interest in the licensee. The Commission's standards for attributable ownership generally do not depend on equity positions, and many parties hold attributable interests in stations without any equity involvement in those stations. These attribution standards apply to both commercial and noncommercial stations, and the individuals and entities these standards capture have the potential to exert influence over the licensee, regardless of whether the station at issue is commercial or noncommercial. The Commission adds that the observation that NCE board members are often governmental officials, governmental appointees, individuals elected by station members, or volunteers does not alter the Commission's view, as the attribution standards rely not on the manner in which that individual became a member of the station's governing body, but on the ability to influence station programming or operations of that station that the membership confers. Accordingly, arguments that the Commission should not impose these additional requirements for NCE stations because the individuals have no equity ownership therefore are not compelling. The Commission notes that its rules do allow officers and directors to be exempted from attribution in limited circumstances, even in the NCE context.

103. The Commission is unconvinced that providing the race, gender, and ethnicity on Form 323–E is burdensome and would discourage board participation. Many NCE stations already provide similar information in an annual report to the Corporation for Public Broadcasting (CPB), and the record does not reflect that the CPB reporting is burdensome or discourages participation. The Commission does not believe that providing similar information to the Commission would have a significantly different impact, *and* other actions adopted *herein* should reduce the burden on all filers. Accordingly, the Commission believes that any additional burdens associated with providing race, gender, and ethnicity information are outweighed by the benefits of requiring the reporting of such information.

104. The *Report and Order* also concludes that extending the RUFRN mechanism to Form 323–E is necessary to help ensure the reliability of the broadcast ownership data it collects. While some commenters support the conclusion that RUFRNs are essential to allow analysis of the data, others argue that the RUFRNs would offer limited utility on Form 323–E. The Commission disagrees. The Commission believes that a unique identifier for each individual attributable interest holder is necessary to make the NCE data aggregable, machine readable, and searchable in the same manner as commercial broadcast station information. As the *GAO* recognized, to fully understand and analyze the ownership of broadcast stations, NCE stations must be included. The Commission's experience with the commercial biennial ownership reports from 2009, 2011, and 2013 revealed that use of SUFRNs is not workable to create data reliability and the record in this proceeding offers no reason to believe that use of SUFRNs in broadcast ownership reports for NCE stations would likely be any more successful. The presence of the RUFRN on the reports for noncommercial stations will allow the tracking of ownership trends over time and allow us to determine with certainty the presence of multiple broadcast interests.

105. The Commission also disagrees with commenters that argue that the CORES FRN and RUFRN requirements are unduly burdensome and would

discourage people from serving on the boards of NCE stations. The process for obtaining a CORES FRN or RUFRN is quite simple and only has to be completed once. And while the first time they file the revised Form 323–E, NCE filers may require additional time and effort to coordinate *with* attributable interest holders, the Commission finds that the sufficient lead time between now and the 2017 filing window will sufficiently mitigate any burden. The Commission is not persuaded that the requirement will significantly inhibit interest holders from serving on the boards of NCE stations as they are already identified as such on Form 323–E. Moreover, the attributable interest holder need not share any personally identifying information with anyone other than the Commission in order to obtain a CORES FRN or an RUFRN. The Commission does not believe that the RUFRN would serve as a serious disincentive to participation in NCE stations, and reminds filers that SUFRNs will be available for use on Form 323–E in the same limited circumstances that SUFRNs will be available to Form 323 filers.

106. *Limited Availability of SUFRNs.* The *Report and Order* retains the availability of the SUFRN, but only for the limited purpose of protecting the position of filers in the case of interest holders that refuse to obtain an FRN or provide *the licensee* with the information necessary to generate an FRN for the interest holder. The Commission expects that where an individual interest holder does not already have a CORES FRN, filers will acquire an RUFRN or CORES FRN for such individuals after obtaining the requisite identifying information, or will instruct the individual to obtain his or her own RUFRN or CORES FRN and to provide the FRN to the filer for reporting on the biennial ownership report form. In order for the RUFRN system to be effective, the Commission believes that it is necessary to ensure that filers are using reasonable and good faith efforts to obtain RUFRNs from individuals with reportable interests (or from CORES on behalf of such individuals). Filers should take specific steps to substantiate that they are making such efforts, and the Commission finds that instructing an individual about his or her obligations and about potential enforcement action are specific steps that would demonstrate "reasonable and good faith efforts." An SUFRN may be obtained only if an individual still refuses to provide a means of reporting a valid RUFRN or CORES FRN after the filer has taken such steps. If an SUFRN is used, the Commission may take enforcement action against the filer and/or the recalcitrant individual. The filer itself will be exempt from enforcement action if the filer substantiates that it has used reasonable and good faith efforts as described herein.

107. The Media Bureau is directed to include instructions for Forms 323 and 323–E and post language on its Form 323 and 323–E Web site, informing reportable interest holders of their obligation to obtain and provide an RUFRN or CORES FRN, or to permit an RUFRN or CORES FRN to be acquired on their behalf, and to alert interest holders of the risk of enforcement action for failure to provide an RUFRN or CORES FRN or to permit an RUFRN or CORES FRN to be obtained. The Commission anticipates that the 2017 filing period will be the first filing period that the requirement will be implicated, and the time frame mitigates any potential burden because filers will have ample time to ensure that they have a current and correct RUFRN or CORES FRN for the individuals and entities reported on the Forms 323 and 323–E.

108. Filing Burden Reductions and Improved Data Integrity. In the *Report and Order,* the Commission also implemented a *number* of changes to Forms 323 and 323–E and moved the filing deadlines in order to reduce filing burdens and improve data quality.

109. To permit filers more time to file Form 323, the Commission moved the filing deadline from November 1 to December 1. The Commission found that the 60-day period between the October 1 "as of" date and the filing date should provide sufficient flexibility for filers such that other deadlines or holidays do not complicate compliance. The Commission also adopted a uniform filing date of December 1 for filing the Form 323–E biennial ownership report. In the *Fourth Diversity Further Notice,* the Commission sought comment on whether it should adopt uniform filing and "as of" dates for Form 323–E. Currently, NCE stations submit biennial Form 323–E in accordance with a set of staggered deadlines. Some commenters suggested that a uniform filing date for Form 323–E should be in the first quarter, to correspond to a date that certain NCE stations submit similar data to CPB. The Commission found that this suggestion would not allow it to obtain the synchronized data, *i.e.,* commercial and noncommercial ownership data that is captured on the same date, needed to evaluate minority and female participation in broadcasting over all the services over the time. Moreover, because not all NCE stations submit data to CPB, efforts by the Commission to coordinate with CPB would not fully address the filing deadline issue. Accordingly, the Commission will require NCE filers to submit Form 323–E in accordance with the same "as of" date and filing deadline applicable to commercial broadcasters (*i.e.,* their filings will be due on December 1 of odd-numbered years and the ownership information provided should be current as of October 1 of the filing year). The Commission required NCE stations to file Form 323–E on the same schedule as Form 323 in order to make the ownership data collected by the ownership reports easier to work with and to facilitate ownership studies using data captured on a uniform "as of" date.

110. The current version of Form 323 allows parent-entity filers to list only one subsidiary licensee and its associated stations. As a result, parent entities with multiple licensee subsidiaries must file separate ownership reports for each of those licensees. In the *Sixth Diversity Further Notice,* the Commission sought comment on a proposal to modify the form to allow parents with several wholly owned licensee subsidiaries to list all of those licensees and their associated stations on one report and whether the proposal should be expanded to allow parent entities to file consolidated reports for all of their licensee subsidiaries, regardless of whether or not those subsidiaries are wholly owned. The Commission found that modifying Form 323 to allow a parent entity with multiple licensee subsidiaries to file one report that covers all of those licensees will greatly reduce the burden on many filers with no negative impact on the quality of the ownership data. Accordingly, the Commission adopted three changes to Form 323: (1) It modified section I, question 7, of the form to allow parent filers to list multiple subsidiary licensees and the stations associated with those licensees; (2) it deleted the portion of section II–A, question 3(a) (non-biennial), and section II–B, question 3(a) (biennial), asking filers to identify the relation that each reportable individual or entity has to the licensee; and (3) it deleted section II–B, question 4 (biennial), asking each parent filer to identify the entity or entities directly below it in the licensee's ownership chain. The revised version of Form 323–E incorporates these modifications as well. No commenters opposed these proposals.

111. In the *Review of Media Data Practices* proceeding, NAB requested that the Commission eliminate section

II–B, question 3(c), of Form 323, which requires a filer to disclose the other attributable newspaper and broadcast interests of attributable parties listed in response to section II–B, question 3(a). NAB argued that submission of this data is burdensome, requiring significant amounts of data entry and file uploading via a series of subforms and spreadsheet attachment(s). The Commission sought comment on this proposal in the *Sixth Diversity Further Notice* and no commenters opposed the proposal. The Commission declined to eliminate the question in its entirety, but believes that modifications to the reporting requirements for other attributable broadcast and daily newspaper interests will reduce filing burdens and improve the quality of the Commission's data. Because information concerning the other attributable broadcast interests of a party listed on one ownership report is contained on one or more other ownership reports, the Commission believes it can greatly simplify the reporting of other broadcast interests of attributable parties on the biennial Form 323 without sacrificing the completeness or usability of the Commission's data. In other words, the public can ascertain a reported interest holder's other broadcast interests by performing a search of other filed ownership reports. Accordingly, the Commission (1) deletes the broadcast interest portion section II–B, question 3(c); (2) adds simple yes/no buttons to relevant subforms; (3) modifies the public search capabilities of the electronic filing system to allow users to search ownership report filings by FRN and output the results as either a list of reports or a list of stations.

112. Information concerning daily newspaper interests does not appear anywhere on Form 323 except in response to question 3(c). In other words, an interest holder's daily newspaper interests cannot be ascertained except in direct response to this question. The Commission determined that it therefore cannot remove the newspaper interests portion of section II–B, question 3(c), without sacrificing the quality and completeness of the data. However, to improve the quality of the data collected in response to this question and enhance the ability of parties to search, aggregate, and cross-reference that data, the Commission modified the subforms and the spreadsheet attachments for the newspaper interests portion of section II, question 3(c), to require filers to provide an FRN (either a CORES FRN or RUFRN, or an SUFRN, subject to the limitations addressed above) for each person and entity listed. In order to further reduce filing burdens and improve the quality of the ownership data, the Commission incorporated these changes into biennial and non-biennial versions of Form 323 and Form 323–E.

113. In the *Report and Order,* the Commission adopted commenters' proposal to allow parties to identify themselves as Tribal entities on Form 323–E in order to inform the Commission's ongoing efforts to expand broadcast opportunities for Tribal entities. Because these efforts involve both commercial and noncommercial broadcasting, and in light of the Commission's ongoing efforts to improve its broadcast ownership data collections, the Commission found that the rationale for adding a Tribal Entity designation to Form 323–E applied equally to Form 323. The Commission found that the collection of this information on a biennial basis will be minimally burdensome, and any increased burden is outweighed by the significant burden-reducing measures adopted in the *Report and Order.* Accordingly, the Commission modified section II–B, question 2(a), of Form 323 and the parallel question in the revised version of Form 323–E to allow (but not require) filers to indicate whether or not licensees and/or reported attributable entities are Tribal Nations or Tribal entities.

114. The Commission also opted to include in section I, question 8, of Form 323 the designation for limited liability companies. Currently, the question requires a filer to identify the nature of the respondent, and currently allows the filer to choose between the designations of sole proprietorship, for-profit corporation, not-for-profit corporation, general partnership, and limited partnership. Respondents that do not fit into one of these categories must select "other" and provide an explanatory exhibit. The Commission found that adding the limited liability company designation to this question will reduce burdens on limited liability company filers by eliminating the need to provide an exhibit.

115. The Commission also reduced burdens and improved the quality and usability of the ownership data by clarifying the manner in which filers should report contracts and other instruments that must be filed with the Commission, as described in 47 CFR 73.3613. Currently, Form 323 and Form 323–E require stations to list all contracts required to be filed with the Commission pursuant to § 73.3613. The respondent on any given report may or may not be a party to these contracts and instruments. Some filers list all relevant documents on the licensee's ownership report, while other filers opt to list different documents on different reports. The latter approach requires filers to include different, often overlapping, lists of documents on multiple reports and forces researchers and other parties to examine all of a station's ownership filings to construct a complete list of that station's required contracts and instruments. To address these issues, the Commission modified the relevant questions on Form 323 and Form 323–E to require all § 73.3613 documents for a station to be listed on the report for that station's licensee. The Commission determined that clarification will reduce filing burdens, because filers will be able to enter all required information on the licensee report and simply check "N/A" for all parent filings.

116. The Commission also reduced burdens by eliminating question 2 of section II–A and section II–B of Form 323, which requires filers to provide capitalization information for any respondent that is a licensee, permittee, or entity that has a majority interest in, or otherwise exercises *de facto* control over the licensee. Eliminating this question will reduce filing burdens without meaningfully compromising data quality because question 3(a) better addresses the Commission's need to ascertain equity ownership of, and voting rights in, the respondent than does question 2(a).

117. To improve the quality of the broadcast ownership data collections, the Commission added a "yes/no" question to each subform of Form 323, section II–A, question 3(a) (non-biennial), and section II–B, question 3(a) (biennial), to allow parties to identify jointly held voting interests. In certain circumstances, two or more parties hold a voting interest in a licensee or other respondent jointly. Two parties may, for example, hold 100 percent of the voting interest in an entity together, as joint tenants (as opposed to each individual holding 50 percent of the voting interests). Similarly, agreements for partnerships or limited liability companies may provide that two or more individuals exercise voting power together, such that any of the relevant parties can fully exercise the voting interest. Because the current version of Form 323 provides no mechanism for parties to identify situations in which voting interests are jointly held, it is likely that filers report such interests in different ways, which leads to errors and inconsistencies in the Commission's data. In reviewing submitted data, the Commission found

that the inability to identify and interpret jointly held voting interests on ownership reports rendered it impossible for Commission staff to electronically or manually process those reports. Parties reviewing non-biennial Form 323 filings will face similar difficulties. Accordingly, the Commission finds that adding a question to Form 323 to address this issue is a minimally burdensome way to improve the quality of the Commission's ownership data. Because the Commission did not believe that there are many jointly held voting interests in the NCE context, the Commission did not make a similar modification to Form 323–E at this time.

118. The Commission also modifies Form 323 section II–A, question 3(a) (non-biennial) and section II–B, question 3(a) (biennial) to add a new positional interest category that will allow filers to identify reported parties that are attributable by virtue of a joint sales agreement (JSA) or local marketing agreement (LMA). This change is designed to increase the usability of the Commission's ownership data and reflects the Commission's recent decision concerning attribution of television JSAs.

119. The *Report and Order* also addressed some proposals submitted by commenters that it has declined to implement at this time. The Commission declined to adopt a proposal to extend reporting requirements to parties that operate a station pursuant to a nonattributable LMA. The Commission declined to extend the reporting requirement to nonattributable operating agreements because it was not convinced that the current record reflects that a data collection focused on this category of nonattributable interest holders would meaningfully improve the data set. The Commission also declined to adopt a proposal to create a separate filing category for transfers to bankruptcy trustees, debtors-in-possession, or trusts, because the record did not demonstrate the utility of the information, particularly in light of the fact that the Commission's online application database and/or Web site already provide information concerning individual transactions. The Public Access portion of CDBS allows users to search for assignment applications based on multiple criteria, including call sign, Facility ID Number, service, station location (city and state), application file number, and applications status. This electronic system also gives users access to the full content of assignment and transfer applications and provides information concerning legal actions pertaining to those applications.

120. Several commenters asked the Commission to modify its electronic filing system, the Public Access portion of CDBS, or the online instructions for CDBS. For example, parties asked the Commission to create new filing systems for parties with limited broadband access and/or to update CDBS accounts to recognize the type of entity, list only reports applicable to that entity, indicate previous filings and dates, allow users to pre-populate entries in new reports based on prior reports (including forms of different types), and provide automated filing reminders. Several of these capabilities already exist in CDBS. For example, if a party uses the same CDBS account for all of its filings, that account already contains the station's prior filings as well as information about those filings, including submission dates. CDBS in many cases allows users to pre-populate new ownership reports by copying or prefilling data from another filing of the same type. To utilize these and other burden-reducing capabilities in CDBS, filers sometimes use different CDBS accounts for different types of filings and different entities. The Commission did not want filers to lose the ability to benefit from the ability to use the same CDBS account for all of its filings. The remaining suggestions were either technically infeasible or would impose significant costs on the Commission that appear to exceed any possible benefits at this time. Other commenters suggested various enhancements to search capabilities within the Public Access portion of CDBS, including searching ownership reports by gender, race, ethnicity, voting percentage, and equity percentage; displaying explanatory messages when searches produce no results; and alerting searchers about assignment and/or transfer applications. Researchers and other parties currently can download the data files from the Commission's Web site at any time and study, search, and manipulate the data in a wide variety of ways. This limits the need for the Commission to develop an extensive catalog of complex query options within the Public Access portion of CDBS. The Commission found that the costs of implementing these suggested modifications to CDBS at this time exceed the benefits.

121. Several commenters asked that the Commission not audit ownership data submitted by NCE stations and/or that NCE entities be subjected to reduced compliance standards and/or forfeitures. The Commission found that in order to maintain and improve the quality of both the commercial and noncommercial ownership data, the Commission must have the ability to audit broadcast ownership data and hold parties responsible for their submissions. Accordingly, the Commission declined to make any changes to its approach to ownership report data audits and related forfeitures.

3. Description and Estimate of the Number of Small Entities to Which the Proposed Rules Would Apply

122. The RFA directs agencies to provide a description of, and, where feasible, an estimate of the number of small entities that may be affected by the proposed rules, if adopted. The RFA defines the term "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction" under section 3 of the Small Business Act. In addition, the term "small business" has the same meaning as the term "small business concern" under the Small Business Act. A small business concern is one which: (1) is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration (SBA). The actions taken herein affect small television and radio broadcast stations. A description of these small entities, as well as an estimate of the number of such small entities, is provided below.

123. *Television Broadcasting.* The SBA defines a television broadcasting station that has no more than $38.5 million in annual receipts as a small business. The definition of business concerns included in this industry states that establishments are primarily engaged in broadcasting images together with sound. These firms operate television broadcasting studios and facilities for the programming and transmission of programs to the public. These firms also produce or transmit visual programming to affiliated broadcast television stations, which in turn broadcast the programs to the public on a predetermined schedule. Programming may originate in their own studio, from an affiliated network, or from external sources. Census data for 2007 indicate that 808 such firms were in operation for the duration of that entire year. Of these, 709 had annual receipts of less than $25.0 million per year and 99 had annual receipts of $25.0 million or more per year. Based on this data and the associated size standard, the Commission concludes that the majority of such firms are small.

124. Additionally, the Commission has estimated the number of licensed commercial television stations to be 1,391. According to Commission staff review of BIA/Kelsey, LLC's Media Access Pro Television Database on July 22, 2015, about 1,268 of an estimated 1,391 commercial television stations (or approximately 91 percent) had revenues of $38.5 million or less. The Commission has estimated the number of licensed noncommercial educational television stations to be 394. We do not have revenue data or revenue estimates for noncommercial stations. These stations rely primarily on grants and contributions for their operations, so we will assume that all of these entities qualify as small businesses. We note that in assessing whether a business entity qualifies as small under the above definition, business control affiliations must be included. Our estimate, therefore, likely overstates the number of small entities that might be affected by any changes to the filing requirements for FCC Form 323 or Form 323–E, because the revenue figures on which this estimate is based do not include or aggregate revenues from affiliated companies.

125. An element of the definition of "small business" is that the entity not be dominant in its field of operation. The Commission is unable at this time and in this context to define or quantify the criteria that would establish whether a specific television station is dominant in its market of operation. Accordingly, the foregoing estimate of small businesses to which the rules may apply does not exclude any television stations from the definition of a small business on this basis and is therefore over-inclusive to that extent. An additional element of the definition of "small business" is that the entity must be independently owned and operated. It is difficult at times to assess these criteria in the context of media entities, and our estimates of small businesses to which they apply may be over-inclusive to this extent.

126. *Radio Broadcasting.* The SBA defines a radio broadcasting entity that has $38.5 million or less in annual receipts as a small business. Business concerns included in this industry are those "primarily engaged in broadcasting aural programs by radio to the public." Census data for 2007 indicate that 2,926 such firms were in operation for the duration of that entire year. Of these, 2,877 had annual receipts of less than $25.0 million per year and 49 had annual receipts of $25.0 million or more per year. Based on this data and the associated size standard, the Commission concludes that the majority of such firms are small.

127. Further, according to Commission staff review of BIA/Kelsey, LLC's Media Access Pro Radio Database on July 22, 2015, about 11,354 (or about 99.9 percent) of 11,364 commercial radio stations in the United States have revenues of $38.5 million or less. The Commission has estimated the number of licensed noncommercial radio stations to be 4,091. We do not have revenue data or revenue estimates for these stations. These stations rely primarily on grants and contributions for their operations, so we will assume that all of these entities qualify as small businesses. We note that in assessing whether a business entity qualifies as small under the above definition, business control affiliations must be included. Our estimate, therefore, likely overstates the number of small entities that might be affected by any changes to filing requirements for FCC Form 323 or Form 323–E, because the revenue figures on which this estimate is based do not include or aggregate revenues from affiliated companies.

128. In this context, the application of the statutory definition to radio stations is of concern. An element of the definition of "small business" is that the entity not be dominant in its field of operation. We are unable at this time and in this context to define or quantify the criteria that would establish whether a specific radio station is dominant in its field of operation. Accordingly, the foregoing estimate of small businesses to which the rules may apply does not exclude any radio station from the definition of a small business on this basis and is therefore over-inclusive to that extent. An additional element of the definition of "small business" is that the entity must be independently owned and operated. We note that it is difficult at times to assess these criteria in the context of media entities, and our estimates of small businesses to which they apply may be over-inclusive to this extent.

129. *Class A TV and LPTV Stations.* The rules and policies adopted herein apply to licensees of low power television (LPTV) stations, including Class A TV stations and, as well as to potential licensees in these television services. The same SBA definition that applies to television broadcast licensees would apply to these stations. The SBA defines a television broadcast station as a small business if such station has no more than $38.5 million in annual receipts. As of June 30, 2015, there are approximately 422 licensed Class A stations and 1,920 licensed LPTV stations. Given the nature of these services, we will presume that all of these licensees qualify as small entities under the SBA definition. We note, however, that under the SBA's definition, revenue of affiliates that are not LPTV stations should be aggregated with the LPTV station revenues in determining whether a concern is small. Our estimate may thus overstate the number of small entities since the revenue figure on which it is based does not include or aggregate revenues from non-LPTV affiliated companies.

4. Description of Projected Reporting, Recordkeeping and Other Compliance Requirements

130. The *Report and Order* requires all individuals reported on Form 323 and Form 323–E to obtain and provide a CORES FRN or an RUFRN. However, the SUFRN remains available in limited circumstances, but individuals for whom an SUFRN is reported may be subject to enforcement action. Currently, the Commission requires all attributable interest holders of commercial broadcast stations to be reported on Form 323. The *Report and Order* also now requires filers of Form 323–E to provide the race, gender, and ethnicity of individuals reported on Form 323–E. The *Report and Order* states that both Form 323 and Form 323–E are due no later than December 1, 2017, and every two years thereafter. The Ownership Reports must reflect information current as of October 1 of the filing year.

5. Steps Taken To Minimize Significant Impact on Small Entities, and Significant Alternatives Considered

131. The RFA requires an agency to describe any significant alternatives that is has considered in reaching its proposed approach, which may include the following four alternatives (among others): (1) The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance and reporting requirements under the rule for small entities; (3) the use of performance, rather than design, standards; and (4) an exemption from coverage of the rule, or any part thereof, for small entities.

132. The *Report and Order* explains that the RUFRN is designed to be an alternative to requiring submission of an individual's full SSN to CORES in order to generate a CORES FRN for purposes of being reported on the biennial ownership reports. The Commission found that an FRN generated through CORES is far superior for purposes of

tracking individual owners and that the decision to allow individual attributable interest holders the option of obtaining and using an RUFRN in lieu of a TIN/SSN backed CORES FRN will impose minimal costs and burdens, if any, on individuals or filers. However, the Commission decided to maintain the availability of the SUFRN in limited circumstances so that filers, including small entities, may timely submit a Form 323 or Form 323–E even if the filer was unable to obtain a CORES FRN or RUFRN for a reported individual. The individual for whom an SUFRN is reported may be subject to enforcement action for failure to obtain and provide a CORES FRN or RUFRN, pursuant to Commission policy and its rules.

133. The Commission has extended the filing deadline for Form 323 to permit all filers, including small businesses, an additional 30 days to file the ownership report. The Commission also set the filing deadlines for Form 323–E to coincide with the deadlines for Form 323. The Commission considered a proposal to set the uniform filing deadline for Form 323–E to the first quarter to coincide with the date that certain NCE stations submit similar data to CPB. The Commission found that this suggestion would not allow it to obtain the synchronized data needed to evaluate minority and female participation in broadcasting over all the services over time. Moreover, because not all NCE stations submit data to CPB, efforts by the Commission to coordinate with CPB would not fully address the filing deadline issue.

134. The *Report and Order* adopted changes to Forms 323 and 323–E to reduce the filing burden on all filers, including small entities. The Commission alleviated the filing burden by modifying Form 323 to allow a parent entity with multiple licensee subsidiaries to file one report that covers all of those licensees. This modification will also be reflected on the revised Form 323–E. The Commission also deleted the broadcast interests portion of section II–B, question 3(c), and instead will add simple yes/no radio buttons to the subforms of that question that require filers to indicate whether each reported entity or individual has other attributable broadcast interests. In order to further reduce filing burdens and improve the quality of its ownership data, the Commission incorporated this change into biennial and non-biennial versions of Form 323 and Form 323–E. The Commission also modified the relevant questions on Form 323 and Form 323–E to require all section 73.3613 documents for a station to be listed on the report for that station's licensee. This clarification will reduce filing burdens, because filers will be able to enter all required information on the licensee report and simply check "N/A" for all parent filings. The Commission also reduced burdens by eliminating on Form 323, question 2 of section II–A and section II–B, which requires filers to provide capitalization information for any respondent that is a licensee, permittee or entity that has a majority interest in, or otherwise exercises *de facto* control over the licensee. Form 323 will now include a limited liability company designation in section 1, question 8, which will reduce the filing burden on limited liability company filers by eliminating the need to provide an explanatory exhibit.

6. Report to Congress

135. Commission will send a copy of the *Report and Order,* including this FRFA, in a report to Congress and the Government Accountability Office, pursuant to the Congressional Review Act. In addition, the Commission will send a copy of the *Report and Order,* including this FRFA, to the Chief Counsel for Advocacy of the Small Business Administration. A copy of this *Report and Order* and FRFA (or summaries thereof) will also be published in the **Federal Register**.

B. Congressional Review Act

136. The Commission will send a copy of this *Report and Order* in a report to be sent to Congress and the Government Accountability Office pursuant to the Congressional Review Act, see 5 U.S.C. 801(a)(1)(A).

V. Ordering Clauses

137. Accordingly *it is ordered* that, pursuant to the authority contained in sections 1, 2(a), 4(i), 257, 303(r), 307, 309, and 310 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 152(a), 154(i), 257, 303(r), 307, 309, and 310, this *Report and Order is adopted.*

138. *It is further ordered* that the Koerner & Olender Petition for Reconsideration and the Fletcher Heald Petition for Reconsideration are *granted* to the extent the relief requested is consistent with this *Report and Order* and are otherwise *denied.*

139. *It is further ordered* that the rule amendments attached hereto as Appendix B and the revised filing procedures and changes to FCC Form 323 and FCC Form 323–E adopted in this *Report and Order* will become effective upon publication of a notice in the **Federal Register** announcing approval by the Office of Management and Budget.

140. *It is further ordered* that the Media Bureau is hereby delegated authority to make all necessary changes to Form 323, Form 323–E, and the Commission's electronic database system to implement the changes adopted in this *Report and Order.*

141. *It is further ordered* that the Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, *shall send* a copy of this *Report and Order,* including the Final Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

142. *It is further ordered* that the Commission SHALL SEND a copy of this *Report and Order* in a report to be sent to Congress and the Government Accountability Office pursuant to the Congressional Review Act, *see* 5 U.S.C. 801(a)(1)(A).

List of Subjects

47 CFR Part 73

Radio broadcast services.

47 CFR Part 74

Experimental radio, Auxiliary, Special broadcast and other program distributional services.

Federal Communications Commission.

Gloria J. Miles,

Federal Register Liaison Officer, Office of the Secretary.

Final Rules

For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR parts 73 and 74 as follows:

PART 73—RADIO BROADCAST SERVICES

■ 1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334, 336 and 339.

■ 2. Section 73.3615 is amended by revising paragraphs (a) through (f) to read as follows:

§ 73.3615 Ownership reports.

(a) The Ownership Report for Commercial Broadcast Stations (FCC Form 2100, Schedule 323) must be filed electronically every two years by each licensee of a commercial AM, FM, or TV broadcast station and any entity that holds an interest in the licensee that is attributable pursuant to § 73.3555 (each a "Respondent"). The ownership report shall be filed by December 1 in all odd-numbered years. Each ownership report shall provide all information required by, and comply with all requirements set forth in, the version of FCC Form

2100, Schedule 323 (including all instructions for the form and schedule) that is current on October 1 of the year in which the ownership report is filed. The information provided on each ownership report shall be current as of October 1 of the year in which the ownership report is filed. A Respondent with a current and unamended biennial ownership report (*i.e.*, an ownership report that was filed pursuant to this subsection) on file with the Commission that is still accurate and which was filed using the version of FCC Form 2100, Schedule 323 that is current on October 1 of the year in which its biennial ownership report is due may electronically validate and resubmit its previously filed biennial ownership report.

(b)(1) Each permittee of a commercial AM, FM or TV broadcast station and any entity that holds an interest in the permittee that is attributable pursuant to § 73.3555 (each a "Respondent") shall file an ownership report on FCC Form 2100, Schedule 323 within 30 days of the date of grant by the FCC of an application by the permittee for original construction permit. Each ownership report shall provide all information required by, and comply with all requirements set forth in, the version of FCC Form 2100, Schedule 323 (including all instructions for the form and schedule) that is current on the date on which the ownership report is filed.

(2) Except as specifically noted below, each permittee of a commercial AM, FM or TV broadcast station and any entity that holds an interest in the permittee that is attributable pursuant to § 73.3555 (each a "Respondent") shall file an ownership report on FCC Form 2100, Schedule 323 on the date that the permittee applies for a station license. Each ownership report shall provide all information required by, and comply with all requirements set forth in, the version of FCC Form 2100, Schedule 323 (including all instructions for the form and schedule) that is current on the date on which the ownership report is filed. If a Respondent has a current and unamended ownership report on file with the Commission that was filed pursuant to paragraphs (b)(1) or (c) of this section, was submitted using the version of FCC Form 2100, Schedule 323 that is current on the date on which the ownership report due pursuant to paragraph (b)(2) is filed, and is still accurate, the Respondent may certify that it has reviewed such ownership report and that it is accurate, in lieu of filing a new ownership report.

(c) Each permittee or licensee of a commercial AM, FM or TV broadcast station and any entity that holds an interest in the permittee or licensee that is attributable pursuant to § 73.3555 (each a "Respondent"), shall file an ownership report on FCC Form 2100, Schedule 323 within 30 days of consummating authorized assignments or transfers of permits and licenses. Each ownership report shall provide all information required by, and comply with all requirements set forth in, the version of FCC Form 2100, Schedule 323 (including all instructions for the form and schedule) that is current on the date on which the ownership report is filed.

(d) The Ownership Report for Noncommercial Broadcast Stations (FCC Form 2100, Schedule 323–E) must be filed electronically every two years by each licensee of a noncommercial educational AM, FM or TV broadcast station and any entity that holds an interest in the licensee that is attributable pursuant to § 73.3555 (each a "Respondent"). The ownership report shall be filed by December 1 in all odd-numbered years. Each ownership report shall provide all information required by, and comply with all requirements set forth in, the version of FCC Form 2100, Schedule 323–E (including all instructions for the form and schedule) that is current on October 1 of the year in which the ownership report is filed. The information provided on each ownership report shall be current as of October 1 of the year in which the ownership report is filed. A Respondent with a current and unamended biennial ownership report (*i.e.*, an ownership report that was filed pursuant to this subsection) on file with the Commission that is still accurate and which was filed using the version of FCC Form 2100, Schedule 323–E that is current on October 1 of the year in which its biennial ownership report is due may electronically validate and resubmit its previously filed biennial ownership report.

(e)(1) Each permittee of a noncommercial educational AM, FM or TV broadcast station and any entity that holds an interest in the permittee that is attributable pursuant to § 73.3555 (each a "Respondent") shall file an ownership report on FCC Form 2100, Schedule 323–E within 30 days of the date of grant by the FCC of an application by the permittee for original construction permit. Each ownership report shall provide all information required by, and comply with all requirements set forth in, the version of FCC Form 2100, Schedule 323–E (including all instructions for the form and schedule) that is current on the date on which the ownership report is filed.

(2) Except as specifically noted below, each permittee of a noncommercial educational AM, FM or TV broadcast station and any entity that holds an interest in the permittee that is attributable pursuant to § 73.3555 (each a "Respondent") shall file an ownership report on FCC Form 2100, Schedule 323–E on the date that the permittee applies for a station license. Each ownership report shall provide all information required by, and comply with all requirements set forth in, the version of FCC Form 2100, Schedule 323–E (including all instructions for the form and schedule) that is current on the date on which the ownership report is filed. If a Respondent has a current and unamended ownership report on file with the Commission that was filed pursuant to paragraphs (e)(1) or (f) of this section, was submitted using the version of FCC Form 2100, Schedule 323–E that is current on the date on which the ownership report due pursuant to this subsection is filed, and is still accurate, the Respondent may certify that it has reviewed such ownership report and that it is accurate, in lieu of filing a new ownership report.

(f) Each permittee or licensee of a noncommercial educational AM, FM or TV broadcast station, and any entity that holds an interest in the permittee or licensee that is attributable pursuant to § 73.3555 (each a "Respondent"), shall file an ownership report on FCC Form 2100, Schedule 323–E within 30 days of consummating authorized assignments or transfers of permits and licenses. Each ownership report shall provide all information required by, and comply with all requirements set forth in, the version of FCC Form 2100, Schedule 323–E (including all instructions for the form and schedule) that is current on the date on which the ownership report is filed.

* * * * *

PART 74—EXPERIMENTAL RADIO, AUXILIARY, SPECIAL BROADCAST AND OTHER PROGRAM DISTRIBUTIONAL SERVICES

■ 3. The authority citation for part 74 continues to read as follows:

Authority: 47 U.S.C. 154, 302a, 303, 307, 309, 336 and 554.

■ 4. Section 74.797 is revised to read as follows:

§ 74.797 Biennial Ownership Reports.

The Ownership Report for Commercial Broadcast Stations (FCC Form 2100, Schedule 323) must be electronically filed by December 1 in all odd-numbered years by each licensee of a low power television station or other Respondent (as defined in § 73.3615(a) of this chapter). A licensee or other Respondent with a current and unamended biennial ownership report (*i.e.*, a report that was filed pursuant to this subsection) on file with the Commission that is still accurate and which was filed using the version of FCC Form 2100, Schedule 323 that is current on October 1 of the year in which its biennial ownership report is due may electronically validate and resubmit its previously filed biennial ownership report. The information provided on each ownership report shall be current as of October 1 of the year in which the ownership report is filed. For information on filing requirements, filers should refer to § 73.3615(a) of this chapter.

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FEDERAL REGISTER

Vol. 81 Monday,
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Part VI

The President

Proclamation 9410—César Chávez Day, 2016

Federal Register
Vol. 81, No. 64
Monday, April 4, 2016

Presidential Documents

Title 3—

The President

Proclamation 9410 of March 30, 2016

César Chávez Day, 2016

By the President of the United States of America

A Proclamation

As a child of migrant workers who struggled just to get by, César Chávez knew the importance of having an economy that works for everyone and devoted his life to ensuring our Nation upheld the values upon which it was founded. On his birthday, we celebrate a man who reminded us—above all else—that we all share a common humanity, each of us having our own value and contributing to the same destiny, and we carry forward his legacy by echoing his peaceful and eloquent calls for a more just and equal society.

César Chávez demonstrated that true courage is revealed when the outlook is darkest, the resistance is strongest, and we still find it within ourselves to stand up for what we believe in. In the face of extraordinary adversity and opposition, he stood up for the inherent dignity of every person, no matter their race, color, creed, or sexual orientation, and for the idea that when workers are treated fairly, we give meaning to our founding ideals. Guided by his faith in his convictions, he fasted, marched, and rallied millions to "La Causa" to expand opportunity and demand a voice for workers everywhere. Together with Dolores Huerta, he founded the United Farm Workers, and through boycotts and protests, he ushered in a new era of respect for America's laborers and farm workers.

Today, we honor César Chávez by continuing to fight for what he believed in, including a living wage for workers and their right to unionize and provide for their family. Workers should have a safe workplace and the comfort of knowing that if they work hard, they can feed their family, earn decent benefits, and gain the skills they need to move up and get ahead. We will also keep up our efforts to reform our Nation's broken immigration system so more people can contribute to our country's success. And as we strive for well-deserved policies for America's workers, like a higher minimum wage and paid leave, we are reminded that the movement César Chávez led was sustained by a generation of organizers who spoke out and fought for a better, fairer America—and it is now upon us to do the same in our time.

Our Nation's progress has always been driven by the belief that extraordinary things happen when we come together around a common cause, and through decades of organizing and serving others, César Chávez embodied this ideal. On César Chávez Day, let us unite to reach for the America he knew was possible—one in which hard work is rewarded, prosperity is shared, and equal opportunity is the right of all our people.

NOW, THEREFORE, I, BARACK OBAMA, President of the United States of America, by virtue of the authority vested in me by the Constitution and the laws of the United States, do hereby proclaim March 31, 2016, as César Chávez Day. I call upon all Americans to observe this day with appropriate service, community, and education programs to honor César Chávez's enduring legacy.

IN WITNESS WHEREOF, I have hereunto set my hand this thirtieth day of March, in the year of our Lord two thousand sixteen, and of the Independence of the United States of America the two hundred and fortieth.

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